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COLONEL THORNTON'S

TRANSACTIONS

AND

NEGOTIATIONS

WITH

ROBERT CHRISTIE BURTON, ESQ.

LEGALLY, MORALLY, AND LIBERALLY

CONSIDERED.

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VINDICATION

OF

COLONEL THORNTON'S

TRANSACTIONS, *&c.*

It is a lamentable consideration, that the reporters of proceedings in courts of law should pay so little attention to any thing like legal accuracy; a neglect so loudly and justly complained of, that Mr. Serjeant Best thought it a grievance that called for parliamentary redress. The injuries individuals receive through the representation of ex-parte reports are incalculable; for, by the misconception or premeditated design of an ignorant, or what is worse, a mercenary reporter, the most

honourable transactions are frequently stigmatized with opprobious epithets, while turpid delinquency is sheltered from censure and deserved execration.

That I may not be thought to magnify this universally-acknowledged evil to aid my present purpose, I must be permitted to declare, (and I am sure of gaining credit for the declaration with all professional men) that, during my attendance on courts of law, for near thirty years, I do not remember half a dozen cases of any considerable magnitude, that have been reported with a precision necessary to the ends of justice,—except when short-hand writers have been specially engaged.

Those who may find it convenient, either from interest or inclination, to controvert what I have said, let them produce a few instances in which the public Papers HAVE AGREED in their reports of the SAME CASE; and I have to regret, that in performing the task I have assigned myself, I shall amply illustrate the foregoing assertion in the case

of Colonel Thornton, whose transactions with Mr. Burton lately became the subject of investigation in a court of law; and, as usual, matter of discussion in public prints, in which a gross perversion of truth, amounting to the most malignant calumny, has spread itself through the country:—to *confute* that calumny is the prominent feature in my present undertaking; and with those who can find a charm in the contemplation of truth and justice, I feel very slender doubts of success.

It will be necessary to observe, that Mr. Burton's application to the court of Common Pleas, was founded upon an allegation of gross fraud, practised upon him; and that a warrant of attorney, upon which judgment was entered up, for the amount of £13,910, had been obtained from him without a valuable consideration.

The application was opened by counsel (as usual) in terms most likely to accomplish his client's purpose; and upon a statement, that a judgment had been entered up against a young man under

age, for such an enormous sum without any fair consideration,—the Court, with little hesitation, granted the following rule:

In the
Common Pleas.

Easter Term, in the forty-sixth year of the reign of King George the third.

Thornton, Esq. v. *Burton, Esq.* } WEDNESDAY, April 23rd, upon reading the Affidavit of Robert Christie Burton, it is ordered, that the plaintiff, upon notice of this rule to be given to his attorney or agent, shall shew cause to this court, on Friday next, why the several warrants of attorney mentioned in the above affidavit, should not be delivered up to the defendant, on his paying to the plaintiff or his attorney, what one of the prothonotaries of this court shall report to be due, and on his delivering to the said plaintiff such articles as the defendant has in his possession, which were sold to him by the plaintiff; and that in the mean time, and until this court shall otherwise order, let execution on the said warrants be stayed.

On the motion of Serjeant Cockrell for the Defendant. } *By the Court.*

The ex-parte statement, in order to obtain the foregoing rule, gave birth to all the unwarrantable suspicions, and injurious assertions teeming from the public prints, and which impressed an idea upon the mind of every man, that Colonel Thornton's conduct in his transactions with the complainant, was tainted with fraud and imposition, censurable in the highest degree, and derogatory to the character of a gentleman, and a man of honor.

On the 19th of May, Colonel Thornton appeared by his Counsel (Mr. Serjeant Best), to shew cause against the rule; the learned Serjeant said, "he had the satisfaction to state to the court, he held affidavits of many respectable persons, to falsify almost every part of the affidavit upon which the rule had been granted, and from which it appeared, the security was given for a fair, and valuable consideration, and that there was not the slightest ground for the complaint of Mr. Burton; for, when Colonel Thornton learned the distress and embarrassment of Mr. Burton's affairs, he several times proposed to refer all matters in

difference to any disinterested person, and the Colonel's conduct had been so truly honourable, that it was his advice, the most ample investigation should take place, improper and injurious accounts having been circulated." The Lord Chief Justice recommended the whole should be referred to the Prothonotary.

Colonel Thornton then begged to address a few words to the Court, to which the Judges paid great attention: He stated, it was his earnest wish, that the whole of the business should be referred, as his Lordship suggested, for his purpose was answered by this public investigation; he was only desirous his honour should be vindicated, and the blame fixed where it ought to rest; for, after what had passed, he would not submit to any reference, without an opportunity to expose the calumny and deceit that had been practised; that he was anxious to convince the Court, and the whole world, of the falsehood, inconsistency, and iniquity of the attack on his honour and character.

Lord Chief Justice.—"I think, Colonel, you judge very properly; it is fair and honourable."

The Court then ordered the judgment against Mr. Burton should stand as a security for the amount of what might be awarded against him.

There is something very remarkable, that this investigation, which terminated so much to the *credit* of the Colonel, did not find so favourable a reception in the public prints, as the *calumny* that was so effectually combated.

The Court having made a rule of reference to two of the Prothonotaries, before whom both the Colonel and Mr. Burton, with all the witnesses either party might produce, were to be examined upon oath, the arbitration commenced on the 6th of June; and for what passed, I must lead the reader to the evidence as it was delivered, beginning with the complainant, Mr. Burton.

It is necessary to observe, that Mr. Burton's statement before the Prothonotaries, is the mere

echo of his affidavit in the Court of Common Pleas, by which he obtained the rule; and the Colonel's is also the tenure of the affidavit, by which he shewed cause against that rule: and the reason I have preferred this statement to the affidavits is, both parties having had the advantage of cross-examination.

In the
Common Pleas.

Between { *Thomas Thornton, Esq. Plt.*
Robert Christie Burton, Esq. Dft.

DEPOSITIONS taken in this Cause before George Watlington and Robert Ray, Esqrs. two of the Prothonotaries of this Court, the Arbitrators to whom this Cause is referred.

Evidence on behalf of Defendant.

Robert Christie Burton, Esq. the Dft. upon his oath states, examined by Mr. Lamb.

THAT he became of age on the 11th Nov. 1805; was introduced to Colonel Thornton, by Mr. Parkhurst, or Sir Francis Boynton, in the winter of 1804; that he went to Thornville Royal on the 6th or 7th of October, for the purpose of attending the sale of horses;—(the pictures not then advertised) bought two horses before

the sale, Le Maitre and Quicklavaca, at 200 guineas each;—had seen the Colonel's huntsman ride one of them (Le Maitre) a hunting, in the winter of 1804;—saw them in the stables the morning of the sale. That at the sale, which was postponed to the 7th December, he bought a mare, sister to Allegranti, for 85 guineas, but did not purchase any thing else. After the sale, it was agreed he should give the Colonel his note for the amount of his purchase; but the Colonel said it would be as well to make the sum 500 guineas, and he would make him a present of three couple of beagles. This note was cancelled when first warrant of attorney given. Admits the purchase was made on his own judgment; and that the horses and mare were in good condition;—left Thornville the evening of the day of sale.

That, about the latter end of November, he returned to Thornville on the Colonel's invitation;—had a good deal of conversation with him about the sale of pictures;—the Colonel told him they would be sold; in consequence of which he returned to Thornville about Tuesday in the following week;—was not then under age;—went alone;—understood that Lord Middleton

had been there. *The Colonel wished to know if he wanted any of the pictures, guns, or sporting apparatus. That he told him there were several pictures he admired; thought them very good, and would wish to have some of them,* particularly some sporting pictures, and views in the Highlands; —That he next day agreed to purchase the following articles (see Schedule);—has no skill in painting;—received from the Colonel a list of the pictures that he had purchased;—there were several gentlemen in the different rooms. After he had viewed the several pictures, the Colonel wished him to walk into the library;—was there alone with him;—the Colonel wished to know what pictures he would have. They took another walk round the rooms, to point out what pictures Mr. B. would purchase;—many persons in the different rooms at the time;—he pointed out to the Colonel those he wanted to have;—bought several of those in the Colonel's list, then returned to the library, where the Colonel crossed those he did not wish to part with. The exhibit produced contains the pictures he finally agreed to purchase;—no other person then in the library. On their return thither, the Colonel sent for Mr. Wichello, and desired him to value them. He replied,

he had do objection if Mr. W. was a competent judge;—a great deal of conversation then passed between Mr. Burton and the Colonel, respecting the abilities of Mr. Wichello, from which he was induced to consider Mr. W. a competent judge. He then examined the pictures, in company with Mr. Wichello, and asked his opinion concerning them;—had no acquaintance with W. before meeting him at the Colonel's, but had seen him there several times; does not remember whether the Colonel was with them when they went round the rooms; admits he conversed with Wichello, about the merits and demerits of the several pictures;—that some of the prices were set down as they went round, and some settled in the library; and that he agreed to purchase upon Mr. W.'s valuation;—that he received the list (exhibited) the next morning from the Colonel. It includes *four or five guns, of the value of 220 guineas, and thinks the price a very fair one*; *the same day he purchased seven mares and a chesnut colt*, thinks Mr. Wichello was present; and adds, "*I thought the Colonel rather pressed the horses upon me.*" He said, he should like to have some of the brood mares, *because some of them were better blood than the others*; the Colonel chose to keep out of them such as seemed the best; there were nine mares; Mr.

Burton got seven out of the nine, and, in his judgment, the Colonel kept the two best. Mr. Burton had selected three, but the Colonel said "You had better take the lot, and we will lump them at 1,000 guineas. *The Colonel said he was going from Thornville, and wished to get rid of them.* This induced him to think the Colonel pressed them on him. Thinks he said, he considered they were dear, as some of them were very old; *bought them more for their blood than any thing else*; recollects the Colonel said, the old mare had bred two good colts; *says, he saw the mares the day after they were delivered,* and in the condition they then were, *he would not give* 10*l. a piece for them*; *thinks they were not worth more than* 220 *guineas*; says they were bought on the 10th or 11th of December, and delivered the 16th or 17th following.

That he also purchased twenty head of deer, at 110 guineas; received six of them, of which *two died the day after* they arrived at Hotham; the other fourteen had not been delivered. He also bought three other deer at 40 guineas. The several articles before enumerated came to 5,713 guineas; the Colonel wanted a security, and wished Earnshaw to be sent for; he came,

and sent to Knaresborough for something, which Mr. B. expected would be a bond; that while the messenger was gone, the Colonel said to Mr. Burton "We might as well make it up 6,000 guineas," and then shewed him some *pictures, which the Colonel valued at* 287 *guineas*; *Mr. B. agreed to take them.* These two sums, with the 500 for the horses, make up the 6,500 guineas, for which the first warrant of attorney was given; *the Colonel did not press these last pictures, nor did Mr. Burton make any objections.* When the messenger returned with the security, it was filled up by Mr. Earnshaw, in Mr. Burton's presence; admits he read it; *never gave any security before;** did not hear any particular name given for it; thought it was a bond when he signed; never even heard of a warrant of attorney before; denies that Mr. Earnshaw ever told him it was a warrant of attorney, or explained the nature or effect of the instrument; does not know who was present in the room, but thinks no one else; he left Thornville Royal within two or three days afterwards.

That in consequence of a letter from Colonel Thorn-

* Was any security given for the £6000 borrowed during his minority?

ton of the 17th December, he returned to Thornville Royal, but admits he had previously told the Colonel he should return; that he purchased some other articles; the Colonel told him the best of the pictures were left; they went round the rooms, and took down the names of several pictures; *the Colonel wished to know if he would have any more?* he replied, he should like to have some of them; *went round the rooms three or four times with Mr. Wichello, examining the pictures*; Mr. W. valued them, and wrote observations on their merits and demerits; found no fault with his remarks. (List of pictures bought, produced.) *The colt, by Jupiter, for which he gave* 500 *guineas, thinks, to the best of his judgment, not worth more than* 350 *guineas*; did not rely on the judgment of Colonel T. *but that one bought by Mr. Mellish turned out well*; and he relied on the judgment of others; *another horse bought at* 75 *guineas, not an unreasonable price*; very vicious; *well bred for a hunter*; impossible but Colonel T. must have known of its vicious propensities, but it was not mentioned to Mr. B. that the horse was so; *library and curiosities bought at* 2,000 *guineas*; *the wine and hounds given in*; none of these yet delivered; sent his waggons for the wines, *but they were*

all sold to me as originals, and I expected they would prove so. *Says, he felt much suspicion in his mind at this expression of the Colonel's*, but did not express his resentment in strong language; spoke as mild as he was then speaking; states, *that Mr. Wichello, speaking of the Reubens's, said, he did not know whether they were originals or not; but, if not, they were exceeding fine copies; admits that W. did not say, previous to the purchase, they were originals*; and that he (Mr. B.) did not, at any time afterwards, express his resentment in any way; *says, it did not signify to him, at the time of the purchase, whether they were originals or not*; that there had been a negotiation about the Death of the Fox, but that, going home, he found he had no room for it, *and that the Colonel readily assented to his request not to have it*; says, that the Colonel thought Wichello had undervalued some of the pictures, and that he would not have sold others, but for the prices set upon them; did not ask Mr. Wichello for his valuation.

Says, that when Earnshaw stated to him the nature of the second warrant of attorney, he knew it was similar to the one he had executed before; and that he did not, after this explanation, com-

plain to Earnshaw, that the first security was not a bond, or *that he had been taken by surprize.*

Admits, that previous to his acquaintance with the Colonel, he was very considerably *upon the turf*; —that the year before he became of age, he had several bets in the red Book; and that he has now many bets pending for the coming years;— and that the horse by Stamford is one of forty he named for the St. Ledger stakes, at 25 guineas each.

That, previous to his going to Doncaster, he wrote to the Colonel, requesting a loan of some money, and that he would meet him at Doncaster.

Had no objection to the attornies mentioned by Mr. Clifton;—knew neither of them:—*that the Colonel recommended him to advise with counsel, and told him Clifton was a very respectable man*; says, that in his then unpleasant situation, he wished no stranger should be made acquainted with it; —that the reason of the Colonel's going alone to him was, his being under arrest. He did not object to the Colonel's going alone;—he put great confidence in Mr. Clifton.

Admits, that when the directions were given to Mason to prepare the third warrant of attorney, he was told, the amount was to be that of the other two. That upon his stating to the Colonel the situation of his affairs, *the Colonel told him he had better call in some of his friends, to consult with them*;—THAT THIS PROPOSITION WAS PREVIOUS TO SIGNING THE THIRD WARRANT OF ATTORNEY;—that he had no friends at Doncaster; they were all gone a hunting.

Question by Prothonotary.—At any previous interview with Colonel T. did any thing pass with respect to the extent of your fortune?—*Answer.* Yes; between the first and second purchase.—I told him my father and self were going to dispose of some property to a considerable amount, and that, from the opinion I had taken, I thought I had a right to two-thirds, exclusive of the £2500 a year.

Query.—*How came you, Mr. Burton, to give the Colonel that description of your property which you now say you have given?*—Answer.—*Because the Colonel and I had much conversation about his lending me some money, and then I explained it to him.*

Query.—At what time did Colonel T. offer to lend you money?—Answer.—*Between the times of signing the first and second warrant of attorney.*

Re-examined by Mr. Lamb.—I understand you to state, that the result of this conversation with the Colonel was, with a view to his lending you money?—Certainly.—But it had nothing to do with any purchase whatever.

Query.—It was stated on Saturday, that the Colonel advised you to call your friends together,—for what purpose?—*Answer.*—For the purpose of procuring me bail.

He further states, that if the Colonel had given any instructions he did not like, he was at liberty to oppose it.—Query.—*How happened it that you objected to the warrant of attorney the same day it was signed?*—Answer.—*From conversation that passed between the Colonel and Mr. Bingley.* He advised me to set the warrants of attorney aside. He was the person who filled up the bail-bond.

Further states, that three of his horses caught the disease from the Colonel's brood mares. That the mange was never before at Hotham, to his

knowledge;—that one of the brood mares died of it;—that the mares were well lodged, and taken care of in sheds;—*that they are now all perfectly recovered, except one of the colts.*

It must be observed, the rule of reference to the Prothonotaries was made upon the ground of gross fraud and imposition; and their province, under that rule, was not to decide the value of the articles Mr. Burton purchased, but whether such fraud and imposition existed; for, to impeach the several transactions, they must have originated in conspiracy, collusion, inebriety, studied privacy, wilful misrepresentation, and under injunctions to secrecy; all circumstances pregnant with fraudulent intentions. Now, can it be said, that any thing on the face of Mr. Burton's own evidence proves, or even furnishes suspicions of such practice?

It will be proper to take a cursory view of the *complexion of the impositions* the Colonel has been guilty of; the first of which is, the sale of two horses to Mr. Burton for 400 guineas, and for which he took his note of hand at a long date. It is really matter of surprise, this transaction had not been left out of the catalogue of impositions charged on the Colonel, more especially as Mr. Burton had the good fortune to sell *one* of the horses for the exact sum he gave for both; and he had also the *prudence* to put the money in his pocket, judging it neither fraudulent, or dishonorable to leave his note unpaid to this day. He admits too, the purchase was made upon his own judgment, which, by the bye, no *conscientious man* will impeach.

He says, *the Colonel wished to know, if he wanted any of the pictures, guns, or sporting apparatus?* To which he replied, *there were several pictures he admired; thought them very good, and wished to have them*; that the next day he agreed to purchase the following articles, viz:

SCHEDULE OF PICTURES, &c.

Sold by Col. Thornton to R. C. Burton, Esq.

	Guineas.
Horse and Lion	50
Wild Fowl	40
Terriers	10
Four copies of the Hawks and Bittern	160
Black Cock and Hen, and Pheasants	80
Shelken	30
Roe Buck	7
Venus and Cupid	30
Hare and Companion	14
Birds, very fine	25
Venus imploring Time to spare Cupid	25
German Owl, &c.	40
View of Hamilton	27
A Shoe-maker	20
Two Reubens	1,000
Carrachi	300
Bigniniani	300
Foxes	300
Stubbs	300
Ferdinand Boll	500

	Guineas.
Greyhounds	300
Vanharp	250
Carlo Marratti, with two others	500
Four Prints, and five Guns	220
Seven Mares, and a chesnut Colt	1,000
Twenty head of Deer	110
Deer that are up	40
Painting of Cattle, by Paul Potter, two more Hawking pictures, picture of a Wanton, Borsom and Wemix, and hawking apparatus	287
Amounting to	6,000

Is there any thing criminal, or even a taint of imposition on a man, who had advertised his property for public sale, asking a person who attended as a purchaser, and whom he then believed to be a gentleman of large fortune, if he wanted any of the articles to be disposed of? Or, did Mr. Burton discover any weakness, or want of judgment, when he told the Colonel, there were several pictures he thought very good, and wished to have them? Was there any want of that judicious caution in Mr.

Burton, which shuts out almost the possibility of being imposed on, when he procured the judgment of an eminent artist to assist him in estimating the true value of what he intended to buy? for, he says, he entered into the merits and demerits of all those pictures. I say, was a man, thus armed against all probablity of being overreached in any article, likely to be cheated in *every thing* he purchased? Some notable proofs to the contrary Mr. Burton very candidly admits; for, nearly in the next line of his deposition, he says, *the guns he bought at* 220 *guineas were fairly worth the money*; he then adds, *the same day he bought seven mares and a chesnut colt, for* 1,000 *guineas*; *that he considered them dear, but he purchased them more for the blood than any thing else.* He then says, *he saw the mares the day after they were delivered, and he then would not give* £10 *each for them, and thinks they were not worth more than* 220 *guineas.* Certainly he gives us a very faint idea of his progress in arithmetic, which he must have been taught (like a witch's prayer) backwards, or he never could have contrived to make ten times seven amount to two hundred and twenty. It is

certainly a flaw in the multiplication table; but Cocker himself is not infallible!

Mr. Burton says, *the mares were delivered on or about the 16th or 17th of December, and it was then he discovered they were not worth £10 a piece*; he gives no reason for not returning them, when he found himself so imposed on; nor is it less remarkable, that in his letter to Colonel Thornton, dated the 23d of January following, he was wholly silent on the subject; nor does it appear, when he executed a Warrant of Attorney, part of the consideration of which was these very mares, that he even then attempted to make any deduction on account of over-charge; or by any means impeach the transaction:—No,—so far from it, on the very day, while the Warrant of Attorney was preparing, *he bought pictures of the Colonel to the amount of 287 guineas, and says, the Colonel did not press them upon him; he then signed the instrument for £6,500.*

It is really time to appeal to common sense, whether any man living, more especially one who had received the advantage of a liberal education,

had seen a great deal of the world, and who tells us he was deeply involved in horse-racing, and other transactions, that require the exercise of an understanding superior to what Mr. Burton *now* pretends to possess, would have given any security, even a note of hand, for so large a sum, the consideration of which he was dissatisfied with! He then follows up the narrative by saying, *he bought another horse, for which he gave £500, but thinks he was not worth more than £350; and that, in the purchase, he did not rely on the judgment of the Colonel, but on that of Mr. Mellish, who bought one that turned out very well.* I believe few men will be found to suspect Mr. Mellish would be over-reached in buying or selling an horse by all the Colonel Thornton's in Europe! He then adds, *he bought another horse for 75 guineas, and says, it was not an unreasonable price, as it was a well-bred hunter;—he then proceeds,—he bought the library and curiosities, at £2,000, and that the wine and hounds were to be given into the bargain; but, when he sent his waggons for the wine, the Colonel would not suffer it to be taken away—(he admits he had at that time an execution in his*

house). To send 140 dozen of wine, for which he had never been paid, to satisfy another man's debt, was certainly no very powerful inducement for the Colonel to part with it! which, however, he would have done, had Mr. Burton procured a permit for the removal of it. Upon his cross-examination by the Colonel's counsel, principally respecting the pictures, he admits, *the painting of the horse Jupiter, was a very fine picture, and one of Mr. Gilpin's chef d'ouvres: the painting of the greyhounds also very fine. That there was between three and four hundred people at the sale at the time those purchases were made, and that the Colonel did not request the transaction to be kept secret;*— admits *he entrusted Mr. Wichello to pack and send home the pictures.* From what appears, hitherto, it would be insulting the understanding of a kitchen-maid, to attempt to make her believe, there was either fraud or imposition in the transactions: we will, therefore, proceed in search of something more assimilated to the idea of legal or moral imposition; and the next attempt we find is, the sale of an horse, called Thatsello, in which Mr. Burton seems to have had so bad a bargain, that

when a Mr. Trapps wished to purchase it of him, he found it too valuable to transfer to another, and refused to sell it.

It must be remembered, that Mr. Burton's cause, or pretended cause, for impeaching the value of the pictures, was grounded upon their not being originals;—yet he says, *it did not signify to him at the time of the purchase, whether they were originals or not.* The next ingredient that contributes to this mass of imposition, that I shall select for notice, is Mr. Burton's representation of having purchased a valuable picture of the Colonel; but, upon going home, he found he *had no room for it*; *and that the Colonel readily relinquished the bargain.* Now, had I stated this transaction, I certainly should not have hesitated to call it an act of liberality; at least I should have consoled myself with having extracted one grain of candour out of a ton of imposition.

Mr. Burton then states, *he wrote to the Colonel to lend him some money, and that he would meet him at Doncaster*; *the Colonel went there, and found*

Mr. Burton under an arrest; that he became one of his bail, and indemnified some person to be the other; he then advised him to consult his friends relative to his affairs; and, upon his telling the Colonel he had no friends at Doncaster, he recommended Mr. Clifton, a Barrister, and a man of respectability; this advice was previous to Mr. Burton signing the third Warrant of Attorney, upon which he grounded his complaint:—Now, is it likely, is it probable, or indeed can it be credited, that the Colonel, in contemplation of a fraud or imposition upon this young man, would put him into the hands of professional men of the first respectability, for the very purpose of laying his affairs before them, and taking their advice thereon; and this, too, before he had accomplished his own illicit purposes, if such he had in view? Would it not have been very natural for the Colonel to suppose these gentlemen would have dissuaded Mr. Burton from giving a judgment on his effects for such an enormous sum, and that they would have taken the Colonel's transactions into consideration with the rest, and at least have suspended the execution of the Warrant of Attorney,

thereby frustrating the ends Mr. Burton wishes the world to believe the Colonel had in view? Who were the men recommended by the Colonel to him?—Not a pettyfogging attorney, or wretches that would become the tool of the Colonel, or any other man for hire; but men of integrity and credit in the country, whom the Colonel, nor any other man, would dare attempt to gain over as accomplices, in foul practice. The reader will observe, the Prothonotary put the following questions to Mr. Burton:—

Q. *At what time did Colonel Thornton offer to lend you money?*

A. *Between the times of signing the first and second Warrant of Attorney.*

Q. *At any interview with the Colonel, did any thing pass with respect to the extent of your fortune?*

A. *Yes, between the first and second purchase, I told him, my father and self were going to dispose*

of some property to a considerable amount, and that, from the opinion I had taken, I thought I had a right to two-thirds, exclusive of the £2,500 per Annum.

Q. *How came you to give the Colonel that description of your property, you now say you have given?*

A. *Because the Colonel and I had much conversation about his lending me some money, and then I explained it to him.*

In vindicating the Colonel's conduct, it is my intention to avoid any harsh expressions towards his opponents; yet, not to draw upon myself the imputation of consummate stupidity, I must observe, that Mr. Burton's reasons for giving an incorrect account of his property, upon such an occasion, did not comport exactly with the most rigid integrity; and I trust my observation will not be deemed impertinent, when I suggest to Mr. Burton, that while he was attempting to taint the honour of Colonel Thornton, he should have

carefully avoided every thing that could sully his own. How far an unwarrantable representation of his property, to a man he meant to borrow money of, is consistent with the strict rules of honour, let Mr. Burton's friends determine.

Q. *For what purpose did Colonel Thornton advise you to call your friends together?*

A. *For the purpose of procuring me bail.*

Here Mr. Burton must pardon me, if I do not give full credit to his answer;—Colonel Thornton could have no such purpose in view, for he himself liberated him, and therefore required no assistance from any of Mr. Burton's friends;—the true reason of the Colonel's advice is obvious,—he found Mr. Burton greatly embarrassed,—that his fortune was not equal to what he had represented it,—and that he was in danger of losing the amount of what he had entrusted him with;—and it is fair to presume, that the Colonel's advice was both salutary and honourable,—in which light the Prothonotaries saw it.

Q. *How came it, Mr. Burton, you objected to the warrant of attorney the very day it was signed?*

A. *From conversation that passed between the Colonel and Mr. Bingley, who filled up the bail bond, and advised me to set the warrant of attorney aside.*

I am really inclined to give as much credit to Mr. Burton's oath as any man can be, but it staggers my conception of consistency, that he should choose the very minute Colonel Thornton rescued him from the hands of a bailiff, to declare himself dissatisfied with his conduct; and that the warrant of attorney he had just executed, was an instrument to enforce the payment of money he did not owe. Perhaps, before I conclude, I may be able to produce a more cogent reason for Mr. Burton's impeaching the transaction at that, or any other period. At the close of Mr. Burton's evidence, before the Prothonotaries, speaking of the brood mares, he says,—they are all now perfectly recovered, except the colt. This declaration of Mr. Burton's the reader will bear in me-

mory, because it renders useless the evidence of eight or ten persons,—so contradictory, that it would be a difficult matter to determine on which side credit ought to be given. Having given Mr. Burton's statement of his case, all the force it can acquire, from legal or moral construction, I will proceed to strengthen it with such evidence as he thought proper to produce, and on which I shall comment as I proceed.

Evidence of Mr. Harris.

George Samuel Harris, Esq. upon his Oath states, That he was a visitor at Thornville Royal, in December and January last; thinks about a month; was there the 6th, 7th, or 8th; saw Mr. Burton there; cannot exactly say the time; understood he was making purchases; not present when any bargains were made; learned from the Colonel, Mr. Burton had purchased several horses, mares, dogs, deer, and some pictures; a cellar of wine, a library, and the articles therein, except the furniture; *does not know the number, nature, or value of the books*; *does not think they were of value*; *thinks the Parliamentary Register among them*; *the library more fanciful than valuable*; the guns certainly of value; *sundry philosophical apparatus of no value to Mr. Burton*, which he thinks would sell for a mere trifle; *knows nothing of the use*

of them, nor their value; did not consider the library as a rare collection of books and other valuable things; had seen many such things; there were stuffed birds; consisted chiefly of cups, saucers, broken egg-shells, glass, &c.; then there was an amazing number of articles; *never examined any of them*; *would not have given any thing like* 1,000*l. for them*; does not include in this valuation a *picture in the room which he thought very valuable*; was not present at any of the interviews between the Colonel and Mr. Burton; never knew the number of dogs that were sold, nor when sold; there were some greyhounds; does not know whether they were given as a present; thinks he recollects some waggons laden with pictures, going to Hotham; the waggons sent by Mr. Burton; saw them packing; does not think Mr. Burton any judge of pictures; nothing ever said at table about Mr. Burton's knowledge or ignorance; saw very little of Mr. Burton except at meals: the Colonel and Mr. Burton were very much together in the morning; sometimes Wichello, and sometimes Earnshaw with them; Mr. Burton's inexperience was a subject of conversation in the house.

A question was here put to Mr. Harris,

Q. Was it or not an observation, that Mr. Burton was pigeoned by Colonel Thornton?

A. I had rather not answer that.

It was wondered in the house, how Mr. Burton could purchase things for which he had no use. Mr. Earnshaw was in the house, employed by Colonel T.; never saw any one there on Mr. Burton's behalf;—does not know much of paintings, but certainly more than Mr. Burton;—had no conversation with him on this subject, but forms his opinion of him from his manner of looking at pictures. *He might be a judge of sporting pictures; the Colonel certainly had some fine specimens*; thinks it an act of great imprudence in him to purchase pictures of such value without a proper adviser;—says, Mr. Wichello is a landscape painter;—understood he was employed by the Colonel to take views about the house;—thinks him rather clever as a landscape draftsman;—thinks he is not a judge of valuable paintings. The Colonel was to give him a guinea a day, besides his living;—thinks him

highly paid at that price, according to his abilities.

The Colonel was very impressive in his manner towards Mr. Burton. The two Reubens' 1000 guineas, does not think them originals;—has seen large collections of pictures;—does not profess to be a great judge;—cannot always distinguish originals from copies;—*has no doubt the Reubens' were copies*;—recollects Mrs. Thornton's choosing a particular picture,—Venus, bathing;—thinks it a Corregio;—admits it to be as valuable as any picture in the collection, except the Denner's head;—*allows the Colonel to be a very good judge of paintings*; *indeed, very few better. There were some very valuable pictures* in the collection;—VERY PLEASING PICTURES. *The Jupiter Horse, by Gilpin, a very valuable picture*;—THE ADMIRATION OF EVERY ONE;—Mr. Burton was to give 700 guineas for it;—a very enormous price, in the estimation of the witness;—in his judgment, it is not worth more than 100 guineas;—believes, that Gilpin will not paint another horse;—rendered more valuable thereby;—*thinks Denner's head a very valuable picture*;—*can form no judgment of the value*; *every picture has its particular value*; many a man might make as good a copy of Gilpin's Jupiter,

as the original itself; the Colonel seemed very anxious to press Mr. Burton to purchase; the witness is of opinion, that in the purchases made by Mr. Burton of the Colonel, at Thornville, *he was imposed on by the Colonel*; pictures are *generally of imaginary value*; believes Denner's head an original, but thinks it over-charged at 500 guineas; there are doubts of its being an original; should think it well paid for at 300*l.* *There is in the collection a very fine painting of a child and dog*, for which WITNESS would *give more than any other person*; *would rather have it than Denner's head*; the painting of the foxes, a modern picture; 300 guineas infinitely too much for it; 300*l.* too much for either of the Stubbs'; for the greyhounds, 200*l.* quite sufficient; the picture of the child and dog, not worth 300 guineas; head of Rochester over-charged at 300; no picture struck the witness to be of the value charged.

Says, he did not caution Mr. Burton during the sale against being imposed on by the Colonel, by reason of his having no intimacy with him; had he been so intimate, he certainly should have done it;—says, he authorised Mr. Bracken to look at a picture he thought of value, and which he thought Hankin said was worth 280 guineas.

Prothonotary.—Whose picture is it?

Had rather not answer that question.

Does not particularly recollect seeing any brood mares, *nor one that is stated to have been diseased. Thinks they were paraded before the house; did not particularly notice.*

Prothonotary.—Did you ever express to any person at Thornville, and whom, that the greatest part of the Colonel's pictures were copies?

The witness declined answering this question for a long time.

The Prothonotary (Mr. Watlington,) asked him, if he had been sworn *to speak the truth, the whole truth, and nothing but the truth?* To which he hesitated, agreed to the truth, at last to the whole, and reluctantly he replied in the affirmative. The Prothonotary then pressed for an answer. He was pressed by the Counsel to give it, still he declined, saying, he had very good reasons for not doing it, and would not, unless bound: but, on the Prothonotary threatening to strike out the whole of the evidence for Mr. Burton, he at length gave

the following answer: I have frequently expressed myself to that effect; think, I have at Thornville; in a loose manner I have made it; cannot immediately recollect who were present; I think, I told Lord Middleton it was a pleasing collection, but they were mostly copies; to the best of my recollection I told him so; have no doubt of it; *was a stranger to him.*

Prothonotary. Whether at the time Mr. Burton was making purchases, it was your opinion the Colonel was imposing upon Mr. Burton?

A. It was.

Q. What induced you to form this opinion?

A. My opinion was formed from general observations.

The Prothonotary asked no further questions, and here his examination closed.

COMMENTS.

From the few remarks I shall make on the evidence of Mr. Harris, I have some reason to believe, a curious reader will not content himself with a mere cursorary perusal;—evidence so singular, and at such enmity with consistency, will certainly excite the contemplation of men not wholly ignorant of the science of investigation. If the force of Mr. Harris's evidence does not convince, it at least amuses; and, perhaps, creates some small degree of surprise. This gentleman commences his tale with something like a statement of the hospitality he met with at Thornville Royal; and, to say the truth, he will find very few disciples of modern gratitude to upbraid him with too profuse a liberality in discharging the obligations he owes the benevolence of Colonel Thornton.

Mr. Harris's evidence, as it stands, partakes more of the paradoxical system than any thing I ever met with, delivered upon oath, in a court of justice.

Speaking of the various articles Mr. Burton purchased of the Colonel, he first notices the library,—saying, *he does not know the number, nature, or value of the books*;—*does not think they were of value*;—*thinks the Parliamentary Register among them*;—*and the library was more fanciful than valuable.* Perhaps I shall not be accused of impenetrable dulness, when I confess, I have not penetration sufficient to discover the portion of divinity necessary to enable Mr. Harris to declare that library to be of no value, the contents of which he avows himself wholly unacquainted with; but, to roll out the absurdity a little wider, he tells us, the Parliamentary Register was among them! Indeed, Mr. Harris is not the only man in this country, who does not assess the proceedings of parliament by any outrageous rule of beneficial estimation; however, I believe, if he had paid the book-binder, he would suspect they ought to fetch

something, as each volume cost three guineas binding in Morocco. It will also be observed, Mr. Harris concludes his veneration for the library with a kind of commutation of its defects, in the following words,—*the library is more fanciful than valuable.* I will not dispute with Mr. Harris's ideas of the distinction between *use* and *ornament*, which may be too extravagant for my philosophy to reconcile;—perhaps, on viewing the boxes at the opera, he may think they contain more *fashion* than *virtue*, upon that subject, also, I shall leave him the full enjoyment of his own sagacity. When, speaking of the philosophical apparatus Mr. Burton purchased,—he says, *he thinks they would sell for a mere trifle*;—and that his opinion may not be subject to error, in the next line he declares, *he knows nothing of their use or value*:—upon what grounds, then, could he form his judgment, that they would sell for a mere trifle? What is his conception of trifles?—for upon this subject there are various notions. Now if Mr. Harris or myself were disputing with Midas or Crœsus, we should not readily agree in the value of gold,—for I vow to God, I think five guineas an inesti-

mable blessing to a modern gentleman; but the two antients we have been speaking of might call it a bagatelle. The philosophical apparatus might have been an unnecessary purchase for Mr. Burton, if he had bought them for the amusement or instruction of his coachman; but for himself, whose education, perhaps, embraced a knowledge of the sciences, they were both valuable and useful.

Mr. Harris, I am told, is a sailor, and a very able one; I would therefore ask him, what idea he would form of a man's understanding or candour, who declared the quadrant, the compass, and all the instruments of navigation, useless and of no value? Would he not suppose such a man terrified at the sight of a fish pond? But, to proceed in his evidence, he says, *there was an amazing number of articles*; *he never examined any of them*; *would not have given any thing like* £1,000 *for them.* Here again we must observe the gift of divinity still accompanied him, for without it many difficulties might have started up to clog his judgment

in estimating the value of articles he knew nothing about!

In speaking of the pictures Mr. Burton purchased, he admits, *there were some of them very valuable, and that Mr. Burton is a judge of sporting pictures,* of which the *Colonel had certainly some very fine specimens, and some that were the admiration of every body.* In fine, the intelligent reader will observe, Mr. Harris's evidence obviously points, at deprecating all the articles Mr. Burton bought; and this evidence might have proved somewhat injurious to the Colonel's cause, but for the insurmountable contradictions it had to encounter, exhibiting a lively picture of one absurdity wrestling with another all through his tale. If Mr. Burton is so good a judge of sporting subjects, it may be worth the enquiry, from what cause his total ignorance arose of others? Mr. Harris, in order to illustrate the comparative inexperience of Mr. Burton in the art of painting, extols the judgment of the Colonel almost to infallibility; and this distinction is the foundation of the supposed imposition on Mr. Burton in his purchases. This left-handed

logic reminds me of Parysatis's knife, which poisoned on one side but healed on the other; for, what is the fair argument to be drawn from the Colonel's scientific knowledge of painting? Surely, not that of his having been many years collecting, from all parts of Europe, ale-house daubs, the works of bungling copyers, and the sweepings of auction rooms? This supposition would be offensive to reason; for it is admitted, on all hands, the Colonel had a very fine collection of pictures; out of which Mr. Burton selected such as pleased himself; and that too, as appears by his own evidence, on the judgment of a scientific man, whose testimony I shall presently introduce.

There is a feature in Mr. Harris's evidence that cannot be looked over with phlegmatic indifference; for it seems this gentleman was a *volunteer* in behalf of Mr. Burton, and which is natural enough, according to the refinement upon modern gratitude—an observation I shall illustrate in the sequel of my comments on his conduct. In speaking of the brood mares, he says, *he thinks they were paraded before the Colonel's house previous to their being*

sent to Mr. Burton's. Mr. Harris is certainly correct in his statement of the mares being exhibited for public view; and this part of his evidence (though perhaps inadvertently given) is too substantial for the Colonel's justification, in the article of horses, to be forgotten. Before I close my animadversions, I must remark the reluctance with which this gentleman answered the questions put to him by the arbitrators, whenever he apprehended they might make against Mr. Burton's case. This obstinacy, or Mr. Harris may call it just what he pleases, had nearly overturned all his testimony; for it appears the prothonotaries declared, if he did not anwser, they would strike out all he had said in behalf of Mr. Burton.—This gentleman's conduct towards Colonel Thornton, *in other respects,* I shall call to my assistance when I form my observations on the *whole* case.—In this place it will be proper to state the following letter, for the purpose of marking how widely the opinion of an artist differs from that of a sailor upon the subject of painting.

London, July 1, 1806.

" SIR,

" I am amazed that any person of common sense and judgment should have stated, that your collection of paintings are daubs, or pictures of no value; I have seen enough of them to be able to swear, if necessary, that they are a very fine collection, and some of them originals not to be surpassed.

I am, Sir,

Your most obedient Servant,

ROBERT BROWN,

Artist.

To Colonel Thornton.

The next head of evidence, on behalf of Mr. Burton, goes to prove the condition of the brood mares and hounds, when delivered at Hotham. The witnesses are six in number; and, it seems, all servants and dependants of Mr. B.'s—evidence wholly unnecessary to illucidate points in the Colonel's case; yet I insert it for the satisfaction of Mr. Burton and his friends, who shall have nothing to complain of, upon the score of misrepresentation or partiality.

William Medd, farmer to Mr. Burton, on his oath states, That he has been a farmer at Hotham twenty years; it was his business to look after Mr. Burton's stock; remembers the brood mares coming from the Colonel's; did not see them till next morning; never had the scab among the horses or dogs at Hotham to his knowledge; there were seven mares; he went with a shed-load of hay to serve them; saw them in very low condition; in such a state as they were, he had not patience to give them hay, because one was very scabbed, and the hair off; does not know her name; the rest in

very low condition; these were not then visibly scabbed, but it broke out soon after; his master not at home then; but when he returned, told him he had scabbed horses, meaning the brood mares. About three days after they came to Hotham, he is not certain it was three days, when he told his master what was the matter, he advised him to send for a farrier; kept the mares in a field with a shed, and gave them corn and hay; folding doors to the shed; close in other respects; good shelter in bad weather; the mares had good food, and were well kept, especially as their situation seemed to require it; *upon examination*, he found one of them very scabbed; at this time the rest not visibly affected; perceived the disease in these about three weeks after they came; did not see it when the farrier first came; the farrier ordered them to have plenty of corn and hay, otherwise they would not bear what he had to do to them; he did every thing the farrier wished him to do, and took every possible care of them; Mr. Burton had hounds before those which came from Thornville; does not know the state of those that came from thence.

John Short, late groom to Mr. Burton, upon his oath states, Was at Hotham when the brood mares and hounds came. The brood mares were in very bad condition when delivered,—one of them, to the best of his memory, was very scabbed;—the hair off in several places, and on the hind-quarters;—they did not appear over-driven when brought; understood they were two days on the road;—the weather not very bad;—a little snow on the ground.

Joseph Lee, coachman to Mr. Burton, on his oath states, Saw the brood mares when they arrived at Hotham; they looked very ill;—one worse than the rest;—the hair off in many parts of her neck;—did not know the disease, but the farrier said it was the scab;—*there were little knots upon her*;—never saw any horse in the same situation;—they all looked very shabby;—one of the mares was in very bad condition, but *the others not so, to his sight.* Within three weeks they broke out, and were all very bad,—not owing to any want of care in Mr. Burton's people. They were very low in condition;—might almost count every

bone in their skin;—the disease proceeded from poor keeping, and not from the journey; has not been much in the habit of seeing brood mares.

Richard Bradshaw, butler to Mr. Burton, on his oath states, That he was at Hotham when the brood mares came to Beverley; did not see them that night, but saw them next day; they were in very bad condition, their bones ready to come through their skin; the hair of one appeared to be coming off, and the skin scurfy; is positive as to the condition of the mares, *as far as he understands them*; the hounds appeared very mangy and scabby; saw them two or three days after their arrival; one of the dog-feeders died soon after they came; is not in the habit of seeing much of dogs; but the man who went with him, said they looked very ill.

Bromitt, steward to Mr. Burton, on his oath states, That he was at Hotham when the brood mares arrived; one was in a scabby condition; the others appeared quite in

a starved state; the disease could not have arisen from the journey; never told the Colonel any thing of the kind, that the state of the hounds, &c. originated in the death of the dog-feeder.

On his cross-examination, *he said, he did not know how the Colonel was told the dog-feeder was dead; when the Colonel came to him, he might say so; the Colonel mentioned something to him about the huntsman being gone away; Witness said, he was gone to Mr. Watt; understood Mr. Walker told him so;* did not tell him the state of the horses was owing to the misconduct of any *of Mr. Burton's people; never mentioned any thing of the kind;* the Colonel said those things to me, which he wished me to submit to paper, viz: "That the dogs and horses were diseased by reason of the dog-keeper being dead, and the huntsman gone away." The then huntsman was ill at that time; thinks he was not confined to his bed, but superintended the dogs; *did not tell the Colonel that the dog-feeder who died was a clever fellow, and the present one an ignorant one.*

George Beale, gamekeeper to Mr. Burton, on his oath states, That he saw the brood mares arrive; they were very poor, and some appeared to be scabbed; one very visibly; all very poor, and in low condition; thinks the mare must have had the infection two or three months before; does not know how long the scabs were visible; very cold weather; thinks the disease might come on slowly; must have been visible more than a fortnight before.

OBSERVATIONS.

The aggregate evidence of these men amounts to nothing like a proof of the fact it was *meant* to establish; namely, that of shewing how grossly Mr. Burton had been imposed on in the brood mares and hounds; for it must be observed, the witnesses speak of *one* mare only being diseased; and if I had not POSITIVE evidence to produce in contradiction to these assertions, the absurdity of their own statement, accompanied with strong presumptive, and circumstantial testimony, added to Mr. Burton's own account of the mares, would be sufficient to invalidate almost every thing they have said;—first, the evidence of

William Medd, the farmer, is of a *very* singular nature, for if he does not display any very great knowledge in horses, he seems no way deficient in point of humanity: this man states, *that*, *when*

he saw their miserable starving condition, he had not patience to administer food to them; and, because *one* of the seven mares was scabbed, it hurt his feelings to rescue the other six from famishing !—he then says, *he advised his master to send for a farrier.* It is somewhat astonishing a man of this farmer's sagacity did not advise him to send them back to the Colonel; he proceeds, *the farrier came, and ordered them plenty of corn and hay*; and the farmer's patience not being quite exhausted, he found enough of *that* virtue left to follow the farrier's directions. However, I by no means attempt to arraign the veracity of this witness, more especially as he candidly confesses he did not see any defect in the other six, till three weeks afterwards; nor did he hear the farrier say they were diseased; an observation very natural, had it been the fact. With respect to the evidence of

Short; (*the groom*) he speaks also of *one* of the mares only; he *did not observe any thing the matter with the rest for some time after.* The next witness,

Lee, (the coachman) confirms the testimony of the others as to the condition of *one* of the mares, *but that he did not see any thing the matter with the rest*; but says, *in about three weeks after they came they broke out and were very ill.*

Bradshaw, (the butler) says, *it appeared to him the hair was coming off*; thus his description of her case is not quite so dismal as the others.

Bromitt's (the steward) evidence seems to be of more consequence than the rest; and from which may be gathered something like probability: for, after concurring with the other witnesses with respect to *one* of the mares, he says, on his cross-examination, *he did not know the Colonel was told the dog-feeder was dead; when the Colonel came to him he might say so; the Colonel mentioned something about the huntsman being gone away*; witness said, *he was gone to Mr. Watt; understood Mr. Walker told him so; did not tell him the state of the horses was owing to the misconduct of any of Mr. Burton's people; never mentioned any thing of the kind;—did not tell the Colonel the*

dog-feeder, who died, was a very clever fellow; and that the present was a very ignorant one.

Mr. Bromitt's conversation with the Colonel leads us to a material circumstance, necessary for the illucidation of the condition of the brood mares. The Colonel having heard a report that they were in a very different condition to what they were when delivered, went to Mr. Burton to enquire into the cause of the change, if any; he there learnt, the huntsman was gone away—no groom—the dog-feeder dead—and no person proper to take care either of dogs or horses;—That Mr. Burton, on account of his embarrassed circumstances, was from home, and never appeared but on a Sunday; and found every thing in a state of confusion and neglect that too often prevails among servants left without controul: and, in lieu of the huntsman, who was gone, and dog-feeder, that was dead, a couple of ignorant persons supplied their places. I will admit, for a moment, and for the sake of argument only, that the mares were disordered, and that, at the end of a month or six weeks after they were delivered: Is there not a probability and strong presumption of the disease having

commenced subsequent to their leaving Thornville Royal, at which place they had all possible care taken of them, and that the change was occasioned by their being at Hotham, where they were wholly neglected? But, as I observed before, this is reasoning upon an ideal proposition, no way warranted by the fact, as I shall incontestably prove:—the evidence of one of the witnesses is calculated for the belief of those who have more faith in Miracles than myself; for, in order to have it believed they did not want food at Hotham, he states, *there was plenty of grass in the fields.* I wish he had also stated, for the sake of correctness, that there was at least four foot of snow, by way *of coverlid to* this fine bed of pasture; better evidence of which cannot be had than Mr. Burton's own words, (on oath) which are, *that he was drifted in the snow at that time.* But, after he was dug out, does not mention a word about the state of the grass; and his sagacious steward might, with a truth congenial to his lively imagination, have sworn, there were plenty of men and women in the church-yard, and only wanted digging up!— I shall defer any further animadversions, respecting the dogs and horses,

until I come to take a view of the Colonel's evidence, and the testimony of the witnesses he produced to controvert those of Mr. Burton; for which purpose I shall begin the Colonel's defence with the evidence of Mr. Trapps, which the reader will find goes a good way towards damping the ardour of *that* testimony we have just surveyed.

Francis Michael Trapps, Esq. on his oath states, That he was at the sale of Thornville Royal; *had a wish to purchase Thatsello; at the time of the sale they were in very fair condition; was called to the window on the 15th of December, to see the brood mares before they were sent off.* From the casual manner in which he viewed them, their condition did not strike him particularly; was at a distance of fifteen yards from them; *if Thatsello had been so diseased as stated, thinks he should have noticed it; she was perfectly clean when he examined her; has seen her once since; every one in the house were called up to see the mares paraded;* there were hounds and a chesnut colt led by; *would have given* 50 *guineas for Thatsello, and bought her without examining her, merely for her blood;* saw all the mares; would not buy them, as he did not want them; his fortune not equal to the purchase; some of them, particularly a roan mare, very valuable; Thatsello worth 150 guineas, perhaps more; *saw her at the sale; looked very plump;* her produce valuable; *from what he saw, thinks the mares not in the condition sworn to by Mr. Burton's groom;* the disease soon appears; but a horse must have had the disease three months to be as bad as Thatsello was said to be; there is a certain point to which the disease arrives, when

it will break out rapidly; they were certainly not in that state when paraded; might as well ask if he saw a pye-ball among them; surfeit and scab very different disorders.

It must be remarked, the foregoing evidence was given by a gentleman wholly independent of either party; the testimony of Mr. Trapps is not a mere contradiction of facts sworn to by Mr. Burton's witness, but a statement, accompanied with circumstances subject to very little error; he says, *he had a wish to purchase Thatsello*; *and, at the time of the sale, the mares, were in a very fair condition*; *he was called to the window to see them before they went off.* That Mr. Trapps had a wish to purchase Thatsello we can have no possible doubt; for Mr. Burton himself swears, this gentleman wished to buy her of him the same evening he purchased her (vide p. 17). Mr. Trapps says also, *that Thatsello was perfectly clean when he examined her,* and *that, had she been so diseased, (as stated) he must have noticed it*; *every one in the house was called up, to see the mares paraded.* It would be too much for me, or any man, to say Mr.

Burton's witnesses have sworn that which is not true; but a very natural question arises, which is, what CAN we say to men who have sworn the mares were in such a dreadful condition only three days after they had been exhibited to the view of upwards of one hundred people, who were then attending the sale, not one of whom discovered any disease in them? Mr. Trapps next says, *Thatsello was worth* 150 *guineas, perhaps more; and her produce very valuable.*

John Thompson, farmer, upon his oath states, That he was at Thornville at the sale of the horses, on the 7th of October; saw several brood mares; thinks there were eight or nine; were well to be seen; in as good condition as any mares at that time of the year; saw them again on the 9th or 10th of December, they were in very decent condition, as brood mares, but rather beat with the weather; he particularly noticed Thatsello and the roan mare; Thatsello was not scabbed or diseased at that time; he wanted to purchase her; she was then in as good condition as old mares generally are;

did not appear sick or moping; has known her ten years; never knew her ail any thing; is much accustomed to horses; buys and sells, and breeds a great number; if she had been diseased or moping, should have perceived it; would have had no objection to buy her in the state she was then; thinks he would have given 40 guineas for her; bid 95 guineas for a year filley out of her; would have given double if a colt; had he been a man of fortune, and on the turf, would have given any thing for Thatsello; thinks her as good as Miss West, that sold for 400 guineas; Norval, out of her, won 770 guineas last year; if he had 5,000*l.* a year, would not mind giving 500 guineas for her.

On his cross-examination, says:—

He was at the sale, and bought a mare;—thinks breeding very profitable, and wished to purchase another mare;—thinks he examined all the mares about a week before they went away; thought Thatsello likely to have another foal, with taking pains;—touched her in several places, but did not perceive her being diseased; thinks she could not have caught the scab without his observing it. The disease is catching;

there is a great probability of her foaling again; has known mares foal at 24:—when he last saw her, there was no breaking out on her skin.

With respect to the evidence of this witness, it would be insulting common sense to waste a comment upon it, as the whole statement impresses conviction in every sentence: and the only question upon it is, whether it wears the aspect of equal credibility with that of Mr. Burton's groom?

Thomas Brackin, steward to Col. Thornton, upon his oath states, He remembers going to Hotham, with the Colonel and Mr. Witherden, in April; remembers Bromitt's coming to them while at breakfast, at North Cave, and his telling the Colonel the dog-feeder was dead,—that the huntsman had quitted Mr. Burton's service, and gone to live with Mr. Watt,—and that there was a scarcity of food for the hounds.—Is positive as to the above,—and says, no artifice was made use of by the Colonel to extort it

from Bromitt. The Colonel was anxious to have the letter forwarded to Mr. Burton; not aware, at that time, that any process would take place.

On his cross-examination, says—

When they arrived at Horham, they asked for Mr. Burton,—the Colonel said he thought he might see Burton, as it was on a Sunday. Mr. Witherden was present at the conversation which took place with Bromitt,—who also said,—witness, (as witness thinks) that the dog-feeder was not competent to his business.

This evidence seems to answer no other purpose than that of illucidating what has before been observed respecting Mr. Burton's being from home, and there being no proper person to take care of either the horses or hounds. I shall now proceed to the examinination of Colonel Thornton himself,—and which cannot prove unacceptable to those who hold TRUTH, JUSTICE, CANDOUR, AND LIBERALITY, IN ANY DEGREE OF LAUDABLE ESTIMATION.

Evidence on behalf of the Plaintiff.

Thomas Thornton, Esq. upon his oath states, That his first introduction to Mr. Burton was, by Mr. Parkhurst, in August, or September, 1805; did not seek the introduction; it was merely accidental, and unknown till it took place at Thornville Royal; previous to this, he had made public his intentions of leaving Thornville, and making sales there. During the period of the first sale, in October, there were from 16 to 20 people at his house, too and fro. There was a negociation between him and Mr. Burton:—he asked 550 guineas for Le maitre and Quetlavaca. At the instance of Mr. Parkhurst, said he would take 50 guineas off; considered them sold at 500 guineas. The second sale was on the 7th of December. To the best of his recollection, no conversation took place between him and Mr. B. at the sale of the two horses, that induced him to believe the latter would return to the second

sale. At the time the first warrant of attorney was given, there might be about a dozen resident visitors at Thornville;—Mr. Burton came as a visitor, knowing the things were to be sold, and said he should like to purchase several things; he did so—and among other articles was a gun, for which he was to give the Colonel a hogshead of claret. *He never pressed Mr. Burton to make any purchase whatever, not even a single article, more than he did any other purchaser—if any thing, less.* Mr. Burton went round the house with him, looking at some of the pictures, and such as he chose, the Colonel marked his price against. Other persons, besides Mr. Burton, purchased pictures of him, and gave him the prices he asked;—solemnly believes the pictures he sold Mr. Burton, worth the prices he asked for them, and more, upon his oath; he asked Mr. Burton as fair prices as he did of Lord Middleton, and others; *the gentlemen who made such purchases were perfectly satisfied with their bargains.* All the pictures bought by Mr. Burton, at the first sale, were purchased one by one;—*and if Mr. Burton objected to the price of any picture, he did not press him to take it.* Other persons came into the different rooms while he and Mr. B. were engaged look-

ing at the pictures; he never hinted to any person, while these purchases were making, his disapprobation of any person coming near him. Should not have objected to any person's hearing the prices he asked. *Has been* 30 *years collecting pictures, and there were several in the family before, collected by his ancestors.* Mr. Burton was never hurried or accelerated in the purchase of any picture; he might take his own time to purchase, or not, as he liked; was not present when he looked at some part of the pictures. One of the pictures purchased by Mr. Burton, (the death of the fox) the Colonel consented to take back, Mr. Burton saying he could not conveniently take it. Never gave Mr. Wichello any secret instructions, when he went round with Mr. Burton, what he was to do; never promised him any reward or favour, if he sold the pictures well; nor ever since that transaction, promised, or given him a guinea, or shilling, on account of such sale; nor ever expressed to him he would oblige him by using his exertions to sell them; knew nothing of Wichello, till within three or four days of the time he went down with him to Thornville Royal, in the early part of December. For every thing done for him

by Wichello, he has paid him according to agreement. Mr. Wichello was introduced by Mr. Ireland, for the purpose of taking drawings, and packing up the pictures, which the Colonel then intended to remove to London. *Mr. Burton asked him if he had any objection to his (B.'s) having the assistance of Wichello, in purchasing the pictures; he replied he had none; or to that of any other person.* No application was ever made to him to admit any other person on behalf of Mr. Burton; Mr. Burton was left to form his own opinion, and do as he pleased. Thinks he valued the Corregio at 30 guineas; and did not expect to have it back again, after he had sold it; nor put a low price upon it, under the idea of having it back again; but, in consequence of his taking back the fox-hunting picture, Mr. Burton offered him to take back any one he pleased that he had sold. Mr. Burton was in great fear, lest the Colonel should take the Jupiter horse. This agreement was not preliminary to the first purchase, but afterwards; Mr. Harris and others, solicited him to take the Corregio; the Colonel considered the picture of the Fox as absolutely sold; believes he told Harris, at Thornville, the prices of many of the pictures he had sold Mr. Burton; Harris never expressed to him

his opinion that he had sold them exorbitantly—quite the contrary; nor congratulated him that he had made a good bargain. He might have given the Colonel his opinion, without affronting him; never sold, or offered to Mr. Burton, or any other person at Thornville, any purchase after dinner; it was expressly prohibited in the house; there was a tablet affixed in a conspicuous part of the library, prohibiting any bets or purchases after dinner, beyond the extent of a guinea. Saw the brood mares two or three days before the sale; they were then in good condition as brood mares, or he should have found fault with his groom; not one of them appeared in the least infected with any disease; if any one had been so infected, he could not have avoided seeing it; and if it had been so, he should have sent it from his stud, to prevent the disease from spreading among his other horses. He had no cause to believe, that at the time of the sale, either of the mares was diseased; on the contrary, he thought them perfectly well and sound. *After the mares were sold, Mr. Burton made a solemn engagement to return to Thornville, and give directions about them; and said he should return very soon.* He did so. *When the mares were sent off, they were paraded before the windows;*

the Colonel, Mr. Harris, Mr. Proby Gurney, Mrs. Proby, Mr. Trapps, Wichello, and others, were present; did not observe, or hear from any other person, that either of the mares was ill; when delivered, they were in as good condition as they usually were.

Two letters of Mr. Burton's put in and read; dated in January, in which no complaint is made of the ill state of the mares: Also, an agreement, signed by Burton, the Colonel, and Wichello.

Went over to Mr. Burton's the 21st of April.—

When he told Mr. Burton he wished to have some security for his money, Mr. B. told him he was ready to give him any security he chose; but requested only time.

The following conversation then took place:

" *Mr. Burton*—You are now going to make large
" purchases; it is but prudence, on my part, and
" not idle curiosity, to caution you before you
" make such large bargains; I must wave all
" delicacy, by telling you, that there are two

" different stories related, respecting your pro-
" perty; some say, you are worth 12,000*l.* a-
" year, and have great expectations; others,
" that you are over head and ears in debt."

His answer was,

" I trust you will not make an improper use of it,
and shall tell you the true state of my affairs."

He did so; what his debts and expectations were.

" That he thought his estate at Hotham was, or
" would be worth, 4,000*l.* a year; that his fa-
" ther and he had an estate at Hull Bank, worth
between 3 and 4,000*l.* a year.—You, (Col. T.)
who are so good a judge of land, will be able to
tell what that estate should sell for."

I valued it at thirty years purchase, and thought his father would be satisfied with 15,000*l.*; besides this, he had large expectations. This representation induced me to alter my opinion. I then asked him the nature of his debts.

He said, " *He owed* 6,000*l. and no more.*"

I then said, " *You are justified in making these purchases.*

In answer to a question put by me,

He said, " *He never played.*"

I then told him, " *He might suit the installments to his convenience, provided the security was good.*"

Such security was prepared by Mr. Earnshaw, and settled between him and Mr. Burton, without the Colonel's interference.

Did not tell Mr. Earnshaw to consider his interest more than Mr. B.'s, only to take the best security; was present when the security was executed; *Mr. Trapps, and others, executed Warrants of Attorney for purchases made at the same time.*

As to the second purchase, the Colonel thinks it was made with more deliberation than the first; *Mr. Burton examined the pictures he purchased one by one.*

To the best of his recollection and opinion, there could not be less than between 2 and 3,000 articles; and solemnly thinks, the library and articles cost him more than 2,000*l.* exclusive of the wine; but including the wine, to be worth 5,000*l.*

Thinks he was present when the second Warrant of Attorney was given; when the bargain for the library, &c. was made; the Colonel was to have all duplicates of books, &c.; had no intention of selling the hounds; *solemnly declares they were only lent, for which he was to have of Burton a hogshead of claret from Chalier, or any other person he chose.* After the securities were explained to Mr. Burton, no application was made by him to the Colonel to vary the nature of them; never knew the Pegasus mare was vicious; has often seen a boy of ten or twelve years old ride her; at the time he sold her, he had no reason to think she had any vice; after the sale, he made arrangements with Mr. Burton for the immediate removal, by Mr. Burton, of the articles purchased by him.

Says, that after he had gone round the house with Mr. Burton, they retired to the library (where all the purchases at Thornville were adjusted)

to arrange the prices of the several purchases, and to know what Mr. Wichello and Mr. Burton had agreed on; and also to enquire into the nature and situation of his affairs; none of the Colonel's pictures, at Thornville, ever bought of Mr. Wood, of Holborn; to the best of his judgment, the collection he sold Mr. Burton was a valuable collection, and many of them are not to be had elsewhere; *thinks the horse Jupiter worth more than he sold it for; certainly would not sell it for a less price; is willing to take it back at the price sold*; and if it had been his intention to remain at Thornville, he would not have sold the pictures for the prices he did;—*and says, that to a gentleman and sportsman, and a man of Mr. Burton's fortune, collecting pictures, they were fairly worth the prices charged; but to a mere picture dealer, they were not worth so much.*

On his cross-examination, by *Mr. Lamb*,—

Says, he does not know what judgment Mr. Burton had in pictures;—*supposes he has as good as others in sporting pictures,—and in other pictures, also; for he selected some, and rejected others; and, in his purchases, he bought the very best he had.* Solemnly believes there was not one copy in the whole

collection at Thornville. Mr. Burton did put the prices to some of the pictures, but will not swear to any one; Mr. Burton took a pencil and marked some of them, which he afterwards brought to the Colonel, with Mr. Wichello; some the Colonel valued himself, and Mr. Burton agreed to the prices; some he chose, and others he rejected, not liking the subject. Question.—*Am I to understand you that Mr. Burton put down the pictures he chose to have, with the prices opposite, without any interference of Mr. Wichello, or any other person?* — Answer. — *Mr. Burton took a paper and set down the prices, and brought it to me;—four, five, perhaps more, I valued myself.* The Colonel did not put down or inform Mr. Wichello of the prices at which he meant to sell the whole or any of them, except as above; says he never governed Wichello in the price of any one of them; on the contrary, some of the pictures were rated lower than he valued them at, and some higher, but he did not object. He made no calculation in the difference of the prices, but submitted to Wichello's valuation readily; believes him a very good judge of pictures; much better than Mr. Burton. To some few pictures he

fixed the prices; thinks he sold them to Mr. Burton at less than they were worth; thinks he had plenty of time to consider, but that he did not depend on his own judgment, as he relied on that of Wichello; says he did not tell Mr. Burton, in his first purchase, the pictures were all originals, nor did he press him to purchase any; thought the Corregio not worth more than 8 or 10 guineas beyond what was charged for it; nor did he set it at so low a price to have it back again if an opportunity should offer. (This alludes to the transaction respecting the picture of the Fox, by Gilpin and Reinagle;) says, he had various opportunities of seeing the brood mares; so had Mr. Burton, if he had pleased; thinks Mr. Burton had been at Thornville between the first and second sale; in the second Warrant of Attorney were included the library and curiosities, among which were several drawings of flowers, by Vidal; (Wichello says, they are worth about 20 guineas a piece;) the Colonel says, he does not well know the value of them, but puts them down at 60 guineas; about 500 or 600 books, among which are the Journals of the House of Commons, bound in red Morocco; thinks the binding worth three

guineas a volume; a picture of St. Peter's, at Rome, painted on a cobweb, for which he gave a pair of very elegant pistols, and he thinks, about 30 guineas; thinks it worth about 100 guineas; several guns, valuable; a tablet, with an inscription, worth 20*l.* curious weather glasses, a number of stuffed birds, some animals, reptiles, curious china, magnets, an electrical machine, conductor, and apparatus, targets, Indian bows and arrows, a weighing machine, &c. &c. Thinks, the library and curiosities, with the wine, cost him 3,500 guineas, but certainly more than 2,000, meaning those articles sold to Mr. Burton; the library and curiosities were committed to Mr. Wichello's care; he can, no doubt tell where they are now deposited.

Says, that to the best of his belief Byrne delivered the brood mares, and that he, (the Colonel) hired the people by Mr. B's desire, who took them to Hotham; *saw the brood mares at Hotham about April*: *several of them scabbed, and apparently half-starved*; as a sportsman, he should call them lousy; one mare and foal appeared in tolerable condition; says, he considers a horse that has

been surfeited, may become lousy; that is his opinion as a sportsman.

Positively swears, that the conversation respecting the amount of Mr. Burton's property, and his caution to him, were previous to a negotiation for a loan of money; Mr. Burton stated the income of his estate at Hotham, and every other part of his concerns; believes, but does not recollect clearly, that the conversation respecting the money took place between the first and second Warrant of Attorney; no person present to his recollection; does not remember the time defeazanced for payment of the money in Warrant of Attorney; saw them at Doncaster; thinks he saw them since at the Percy Coffee-house; does not know, nor can he give an account, at what time the money was to be paid, as to the second Warrant of Attorney. *Sold his portrait at full-length for a hogshead of claret*; should suppose Mr. Burton and Mr. Wichello fixed the prices on the pictures which formed the second sale; thinks they were the pictures he alluded to as the cream; thinks Mr. Burton had intimated his intention of having more pictures, but had not

mentioned which; thinks that must have been between first and second Warrant of Attorney; in the library, four different drawings of flowers, by Vidal, 500 or 600 volumes of books, St. Peter's at Rome, painted on a cobweb; thinks it, as an unique, worth 100 guineas; tablet from 10*l.* to 15*l.* curious weather-glasses, &c. &c. &c. There are two places of security, one at Lyland's, the other at Flasby; some of the library, on recollection, he saw at Flasby; both the farm houses were his; one is so still; when he left Thornville, he gave instructions to put the things belonging to him and Mr. Burton in a place of security; but to which place the different things were taken, he cannot say; but thinks the wine is at Lyland's; has not seen it; the cellar ordered to be opened, and the wine to be secured; *his hearing of the execution in Burton's house was the cause of stopping the pictures*; *could not send the wine for want of a permit*; most of the articles which constitute the second Warrant of Attorney are at Lyland's and Flasby; should Mr. Burton send, apprehends they would not be delivered without his authority; to the best of his knowledge he never read that paper (meaning the one signed Wichello, Thornton, Burton;) nor does he remember hearing it read to him; has signed a

paper in his life of equal value, without reading it; should have attended with more minuteness to this paper, had not Mr. Burton so *solemnly promised* to come back; thinks it was signed in the library; does not recollect whether any other person was present when he signed that paper except Mr. Burton and Wichello; thinks it was a paper drawn up as a sketch for Mr. Earnshaw to draw up Warrant of Attorney; not to give Mr. Wichello authority to fix prices, Mr. Wichello and Mr. Burton having previously made arrangements for the prices of the pictures; cannot recollect whether Mr. Wichello had made up his mind as to the prices before that paper was written; either before or after the prices were fixed by Mr. Wichello and Mr. Burton; thinks two Warrants of Attorney payable by instalments; as to the third Warrant of Attorney recommended Mr. Clifton, thinking him, as between Mr. Burton and himself, as good as any he saw; Mason was the attorney chosen; cannot tell whether Mason or Clifton said, "You had better keep the two Warrants of Attorney, they will serve to shew the consideration of the third." They

did not seem to suspect the third Warrant of Attorney.

The reason why the third Warrant of Attorney was shortened in payment was, as it appeared to him, to secure that part of the property sent by him to Mr. Burton from being seized by any future creditors; when such a statement was made, Mr. Burton approved of it; does not remember going out while this took place; believes they were present when he told Mr. Burton he should enter up judgment when he got to London; he told Mr. B. that, when they met in town, they should take measures to secure the property sent to Hotham; thinks he might have said to Mr. Bingley, he should put a man in possession, &c.; that measure was for Mr. Burton's and his benefit; believes such measure was recommended by Mr. Clifton and Mr. Mason; as far as memory serves, thinks Mr. Mason might have staid half an hour; both Mason and Clifton advised him to act as above stated, to take possession, but not sell, unless circumstances should make it necessary; Mr. Bingley said, Mr. Burton's affairs were not so bad as

they had been represented, and gave a favourable account of them; does not recollect that Mr. Bingley made any objections to the plan proposed, nor made any expostulations, saying, it would be very wrong; to the best of his knowledge nothing more passed; they all parted good friends.

To questions put by the Prothonotary, he gave the following answers:

That the two Reuben's had been in his possession 14 *or* 15 *years; bought them of Christie, in Pall Mall, for between* 100*l. and* 200*l.; very large pictures*; bought together, companions. *After they had been cleaned, Vandergutch offered to give him* 4,000 *guineas worth of pictures for them in exchange*; after he had determined to dispose of his effects at Thornville, he never asked any artist to purchase the Reubens'; *they were bought out of Lord Waldegrave's collection; frames of oak; presented to Lord W. by Prince Charles of Lorraine; Wichello fixed the price, or he should have valued them at* 4000 *guineas*; was offered 500*l.'s* worth of pictures for the child and dog; had Carracci about same time; knows not where he bought

it, nor the price; purchased Ferdinand Ball about same time, out of a private collection: *Major Topham valued it at* 4,000 *guineas; bought it at a high price; Sir Francis Blake offered him* 30,000*l. for the collection;* thinks he wrote to Sir Francis, intimating his intention to dispose of his pictures; bought the head of Denner of a linen-draper; to the best of his recollection, the price was about 200*l.*; the horse-fair, thinks he bought of Mr. Forster, of the Customs, but forgets the price; both bought of Vandergutch; forgets the price; in addition to the contents of the library, already enumerated, he gave the following particulars: A fine Roman lamp, value about 25 guineas; paintings of horses, and drawings of dogs, by Garrett; curious folio editions of Homer and Milton, printed at Glasgow; a Spanish gun, valued at 150 guineas, but would not have taken that sum for it; Stubbs's picture explained; upon being asked why the two Warrants of Attorney were not given up when the third was executed at Doncaster? He replied, that he threw them across the table with an intention of relinquishing them; that they were afterwards pushed back, and both counsel and attorney advised him to keep them, as they

would shew the consideration, or be of use to him, or words to that effect; but what they meant by saying so, he could not tell. He certainly took them away by design, not accident. The third Warrant of Attorney was given to secure his property in the hands of Mr. Burton, and to give the Colonel a priority of claim over every other creditor.

Here the Colonel related the conversation between himself, Bingley, and others.

Does not recollect having any private conversation with Mr. Bingley, other than what he stated yesterday; the idea of putting a man in possession at Burton's was suggested by Mr. Clifton and Mr. Mason, in Mr. Burton's presence, for the mutual benefit of both; but this was not to be done till they came to London. Upon his oath, he is certain that Mr. Burton understood, that if, upon their coming to town, Mr. Hubbard should approve it, a man was to be sent down to Hotham, to take possession, for the mutual benefit both of Mr. Burton and the Colonel.

Re-examined by *Mr. Williams*,—

Thinks he might have read the paper, speaking of the hounds, though he does not recollect it. The house at Thornville was at this time in great confusion. Burton went away late after dinner, but did not return. Upon his oath, says, he did not prefer Mr. Clifton from any sinister motive; had employed him on other occasions, and found him strictly honourable in every respect. *Did not use any artifice to extort from Bromitt the confession he made respecting the scarcity of food, and the dog-feeder's being dead;—if Bromitt had not told him, he could not possibly have known of the facts having been stated.* Upon his oath saith, he does not know where the Warrants of Attorney now are; but at the time he threw them across the table, as before stated, he meant to relinquish them, and to be content with the third; should not have taken them back, had they not been pushed back. The library was as good as any other gentleman's he was in the habit of visiting in the neighbourhood. His intention, on taking the third war-

rant of attorney, was to advise with Mr. Hubbard as to what was best to be done; the two first were at distant dates, the third at a short date. Has reason to believe that Mr. Burton was greatly indebted, beyond the 6000*l.*

At this period, a proposal was put in by the Colonel, and rejected by Mr. Burton.

If the foregoing affidavit of the Colonel's is not composed of genuine probity, it is the best copy I ever met with; for, what other name can we give it? The imbecility of folly could not produce it, and the wary caution of knavery, (keeping the pillory in view) would have shrunk from the task; but truth is supported by an intrepidity that is never shaken by the test of enquiry:—I shall therefore venture (taking it altogether) to call it the effusions of strict integrity:—and, that no embarrassment may attend the wading through a statement of such length, I have extracted the following material passages from the mass of his evidence, as containing every thing necessary to make proselytes to truth, candour, and reason.

EXTRACTS
FROM COL. THORNTON'S EVIDENCE.

1. *He never pressed Mr. Burton to make any purchase whatever, not even a single article, more than he did any other purchaser.—If any thing, less.*

2d. *Mr. Burton asked him, if he had any objection to his (B's) having the assistance of Wichello in purchasing the pictures.—He replied he had none, or to that of any other person's.*

3d. *After the mares were sold, Mr. Burton made a solemn engagement to return to Thornville, and give directions about them, and said he should return very soon; when the mares were sent off they were paraded before the windows. The Colonel, Mr. Harris, Mr. Proby Gerney, Mrs. Proby, Mr. Trapps, Wichello, and others, were present.*

4th. *Burton said, he owed £6,000, and no more. I then said, you are justified in making these purchases. He said, he never played: I then told him, he might suit the instalments to his convenience, provided the security was good.*

5th. *Mr. Trapps, and others, executed Warrants of Attorney for purchases made at the same time.*

6th. *Mr. Burton examined the pictures he purchased one by one.*

7th. *Solemnly declares, the hounds were only lent, for which he was to have an hogshead of Claret, from Chalier, or any other person he chose.*

8th. *Thinks the painting of the horse Jupiter worth more than he sold it for; certainly would not sell it for a less price: is willing to take it back at the price sold.*

9th. *Says, that to a gentleman and sportsman, and a man of Mr. Burton's fortune, collecting pictures, they were fairly worth the prices charged;*

but, to a picture dealer, they were not worth so much.—

On his cross-examination by counsel.*

10*th Supposes Mr. Burton's judgment as good as others in sporting pictures, and in other pictures also; for he selected some and rejected others; and in his purchases he bought the very best he had.*

Q. *Am I to understand you, that Mr. Burton put down the pictures he chose to have, with the prices opposite, without the interference of Mr. Wichello or any other person?*

11*th.* A. *Mr. Burton took a paper and set down the prices, and brought it to me; four or five I valued myself.*

12*th. Saw the brood mares at Hotham in April; several of them scabbed, and apparently half-starved.*

* A Gentleman, not very notorious for overlooking points that will serve his client's cause.

13*th. His hearing of the excution in Burtons's house was the cause of stopping the pictures; could not send the wine for want of permit.*

To questions put by the Prothonotary, he gave the following answers:

14*th That the two Reubens had been in his possession fourteen or fifteen years. Brought them of Christie, in Pall-Mall, for between* 100 *and* £200; *very large pictures. After they had been cleaned, Vandergutch offered him* 4,000 *guineas worth of pictures for them in exchange; they were bought out of lord Waldegrave's collection, frames of oak, presented to lord Waldegrave by prince Charles of Lorraine. Wichello valued them, or he should have fixed the price at* 4,000 *guineas.*

16*th. Major Topham valued Ferdinand Ball at* 4,000 *guineas; bought it at a high price.*

17*th. Sir F. Blake offered him* £30,000. *for his collection*

18th. Did not use any artifice to extort from Bromitt the confession he made respecting the scarcity of food, and the dog feeder being dead. If Bromitt had not told him, he could not possibly have known the facts having been stated.

To doubt the authenticity of this evidence, the reader must conclude the Colonel a fool, or a mad-man, to venture so circumstantial, so positive, a testimony upon oath, which, if false, would subject him to the fatal contradiction of so many persons; indeed, had it been given by a man of a very different description, a man in desperate circumstances, more ignorant, or more regardless of the consequences of falacy, it is supported by such a body of incontrovertible testimony, that, to doubt it, would betray a kind of profligate prejudice not to be conceived but by the most depraved mind. The Colonel's cross-examination, so far from weakening or shaking his evidence in chief, strengthens every sentence of it: he is unequivocally consistent throughout the whole, and exhibits a lively illustration of the legal maxim, that truth travels the

straight road, and can only be told one way. I shall therefore quit my observations on the Colonel's evidence, by impressing on the mind, one of the instances of his candour; for, (speaking of the pictures,) he says, *that, to a gentleman, a sportsman, and a man of Mr. Burton's fortune, collecting pictures, they* were fairly worth the money; but, to a picture-dealer, they *were not worth so much.* In fine, suppose the Colonel's story stripped of the solemnity and peril of an oath, it is natural, consistent, and never loses sight of probability; nor is it marked with a single circumstance that can raise a doubt of its veracity.

Mr. Wichello's Evidence.

John Wichello, artist in painting, on his oath states, That he went to Thornville Royal, about the 29th Nov. and staid there till after the 10th of January; remembers Mr. Burton's coming there, and the sale of various articles that constituted the first Warrant of Attorney; was applied to by the Colonel and Mr. Burton to value those articles, (meaning pictures); went round the house twice or thrice with Mr. Burton, and once with the Colonel; Burton requested his opinion of the merits of the pictures as they went round; he set prices on some of them, at Mr. B.'s desire; Mr. B. made various observations on the pictures, and asked his opinion, which he gave him, as he thought right; thinks, in one or two sporting pictures, he (B.) pointed out what he conceived demerits. *His remarks indicated a natural taste for the animal itself, but thinks he has no scientific skill in paint-*

ing. As we passed round the rooms, Mr. B. made remarks which indicated a natural taste; witness, to the best of his judgment, set a fair value on the several pictures prized by him. The Colonel neither before nor since the sale, directly or indirectly gave, or promised to give him, any sort of recompence for selling the pictures to the best advantage; never received any favour or recompence beyond the wages of his industry and ingenuity as an arsist. Does not expect, in his own mind, any favour in the transaction between the Colonel and Mr. Burton; had the transactions been between strangers, he should have settled the same prices to a farthing, if called in by the parties to give his valuation. *Did not know the Colonel till the very evening before he went to Thornville, to take landscapes.* Says, that to the best of his judgment, he pointed out to Mr. Burton the merits and demerits of each picture. *The only remuneration he expected in this transaction was from Mr. Burton, as he considered himself employed by him.* The Colonel did not give him any instructions for his guidance in valuing the pictures; thinks now the pictures are worth what he then valued them at; and that there was not one copy in the whole col-

lection at Thornville. Well remembers the Colonel telling Mr. Burton he would not warrant one of the pictures as originals; believes they are so, but will not venture to swear it. The conclusion upon his mind was, that they were all originals. The Colonel expressed himself to the above, or like effect;—and further said, he would not undertake to say any picture was original unless he saw it painted. Witness says, that so far from owing the Colonel a favour, he has reason to complain of his not fulfilling some part of his engagement to him. (Witness enters into an explanation of this, not material to the case); neither the Colonel, nor any other person on his behalf, intimated to the witness that he should please the Colonel by getting rid of the pictures; the Colonel never even returned him his thanks for his conduct; but Mr. Burton did. Mr. Burton also employed him to pack up what he had purchased, and promised to remunerate him for his loss of time; says he faithfully executed the charge. That there is no reason, except his being an artist, for his being called an hireling, and a dependent, as unwarrantably stated by Mr. Harris, in his affidavit;—was not in any way

under the controul of the Colonel, more than of any other person who employed him as an artist; —did not feel himself to be under the dominion of the Colonel. Says, that before he went to Thornville, the Colonel engaged him to pack up his pictures, for the purpose of having them removed to town. Has not received from the Colonel any compensation beyond what he promised him; has been an artist working for hire above ten years; is now twenty-two years of age; at the age of twelve he received a guinea and a half a day for seven days together. Has been abroad; was at Paris during the peace; examined the collection at the Louvre; was there six weeks, or two months. Has seen several of the principal collections in London. Is much in the habit of associating with artists in town, and conversing with them on the subject of painting. As an artist and an amateur, he thinks the Colonel's a very valuable and fine collection of the kind,—the finest he had ever seen. By kind, he means sporting pictures, and animals. Thinks Denner's Head the finest picture he had ever seen,—even in the Louvre. The picture is so very fine, it would take an artist ten or twelve days to paint the ball of the eye. Says,

he neither pressed Mr. Burton, nor hurried him in the least, in the purchase of any one picture; Mr. Burton might, and did, take his own time.

The second sale of pictures was made under the same circumstances as the first. Throughout the whole transaction, he acted as fairly and unbiassed as he now deposes;—Mr. Burton never hinted to him he thought he leaned more on one side than the other. Was present at the sale of the library, which sold for 2000 guineas. Burton was to have the library as it then stood, except the sporting tackle, duplicates of books, one or two guns, one or two pictures, three pieces of curiously-painted glass, a gun-case, all the furniture, and some title deeds, very old and curious, in frames. A cellar of wine was to go with the library. Mr. Burton asked the Colonel how much wine was in the cellar; the Colonel said, he did not know how much; but would warrant 40 dozen. Some stag-hounds, except one named Consul, were also given in. Nothing else mentioned; is sure they were. Remembers the fox-hounds being also mentioned; the Colonel told Mr. Burton, as he had wished for his fox-hounds, he would let him

have the use of them, as he did not immediately want them himself; Mr. B. said, very well, and it was agreed, he should give the Colonel, 200*l.*, or two hogsheads of claret, for the use of them; it was the specific request of the Colonel, that care should be taken of these hounds; no time specified for the use of them; is quite sure the claret was given for the use of the fox-hounds. This happened about three o'clock in the day; does not recollect any thing being said about the Colonel's going abroad; the conversation about the hounds followed immediately after the sale of the library; *is positive it was not a sale of the hounds, but a loan*; the agreement signed by himself, the Colonel, and Mr. Burton, was read over by him and Mr. B.; conceived it to be the substance of the contract before entered into between Mr. Burton and the Colonel. After the sale, the Colonel gave the key of the library to Mr. Burton, and he to the witness, as his agent, to take care of, and pack it up; he packed up the whole; there was no one else to assist him; it was put into waggons, the horses put too, and just going off, *when Mr. Clutterbuck* returned* from York, and said, the things must not go, as there was an execution in Mr. Bur-

* The Colonel's Steward.

ton's house; this was on the evening of the 7th of January; but, for this circumstance, they would have been sent; at this time, Thornville-house was in the greatest confusion; the waggons, containing the library and curiosities were drawn from the door, and deposited at a farm house of the Colonel's; he considered it for Mr. Burton's interest so to do; for his trouble herein, he was to be paid by Mr. B.; remembers waggons coming over from Hotham for the wines; the reason for not sending them was, that permits could not be procured from Knaresborough; was at the Colonel's when the brood mares were sent off; saw them from the window; the hounds also passed under the windows; he fed them; it was an invariable custom with the Colonel, to have his horses and hounds paraded before the windows every morning at Thornville during breakfast; the hounds were extolled by the company, who said, "what beautiful creatures they are!" Took particular notice of the mares; they were six or eight in number; if there had been one of them with the hair off, poor, or scabbed, he should have observed it certainly; there was a beautiful colt with the mares; not one of the mares appeared in the

least moping, or as having the hair falling off; when the Colonel, after the sale of it, went into the library, he did not take any thing out of it but the excepted articles; was in the room with him the whole time, and had the key of it always in his possession; in any thing he saw during his stay at Thornville, he does not think, nor has he any reason to believe or suspect, that Mr. Burton was grossly imposed upon by the Colonel.

On his cross-examination, he states,

That he was born in Italy; learned to draw before he could well remember; has been in the East Indies while a child; was never in any other capacity than as an artist; was at the battle of the Nile, in the service of Capt. Mansfield, who commanded the Goliah in that action; made several sketches of the respective fleets during the engagement; *went out for the express purpose of taking views and sketches*; returned to England after the action; has remained in England ever since; painted the battle of Trafalgar, in the Haymarket—the whole of the shipping, fire, and smoke;—set the prices at Thornville upon

the pictures bought by Mr. Burton; conceives himself a judge of paintings; *the value of a picture is almost impossible to be known, depending so much upon taste and fancy*; the Colonel asked of me, if I had a sufficient judgment in painting before I went round with Mr. Burton; was sent for to the library, to the Colonel and Mr. Burton; Mr. B. and he examined them, and he valued them as they went round; thinks, he gave the Colonel and Mr. Burton each a copy of his valuation; was never employed to value pictures by any one else before; did not like the office then; a very delicate one; does not think it requires much experience to value paintings; nor that Mr. Burton is a judge of them; should have been very much surprised to have heard the Colonel swear, Mr. Burton was a good judge of them. Did not set down the prices of all the pictures that were sold; thinks he valued all, except six or seven. Valued the whole of the second list. The Horse-fair he thinks an original; examined it most minutely. Is not accustomed to buy and sell to a great amount. Has been in the habit of buying and selling these ten years. Knows good pictures when he sees them. Has made copies from Morland so exact, they could not be told from the originals. Was

not acquainted with Mr. Burton more than two days before he was called upon to do *this kind office* for him. (An expression of Mr. Lamb's, alluding to the valuation of the pictures); did not ask Mr. Burton if he had proper places to deposit the pictures he was purchasing; should have thought it impertinent; his business was *to value*. Mr. Burton said, he wished him to go to Hotham, to arrange his pictures for him; he wrote a letter to witness to this effect; considering Mr. Burton to be possessed of the fortune he said he was, he did not think him a rapid purchaser; thinks the conversation respecting Mr. Burton's fortune was mentioned before him about the middle of the second purchase; was sent for into a room, called the Prince's chamber, where Mr. Burton gave the Colonel to understand, his estate at Hotham was about 3,000*l.* a year; that he had never received a shilling from his father, after the death of his grandfather, in consequence of which, he was under the necessity of borrowing money to a great disadvantage, and that, when he became of age, he had only incurred debts to the amount of 6,000*l.*; also, that there was an estate at Hull Bank, which

his father and he had agreed to sell, worth from 60,000*l.* to 80,000*l.*, as near as he could recollect; that his father was to have 10,000*l.* or 20,000*l.* to cut off the entail, and Mr. Burton the remainder. That he had other expectations;—and witness says, that, from these representations, Mr. Burton appeared to have from 8 to 12,000*l.* a year. Does not mean to say, that Mr. Burton represented to the Colonel, in his hearing, that he had more in possession than the estate at Hotham; certainly thought that Mr. Burton was making large purchases;—and, if he had conceived he was making improper purchases, beyond the extent of his fortune, he thinks he should have taken the liberty of mentioning it to him, *which every honest man ought to do*; and repeats, that if he had conceived Mr. Burton could not pay for the pictures, he should have mentioned it to him. The Colonel told Mr. Burton, he would not warrant *all* the pictures to be originals; some of them certainly were, being painted under his own eye. Thinks one or two of the sporting pictures very ancient;—some modern pictures will fetch treble the value of ancient ones of the same kind. Mr. Burton was never pressed, in

the presence of the witness, to make any purchases. A picture will not sell for so much by auction as it will by private contract, unless a large collection be sold together. If these pictures had been sold by private contract, they would have sold for more money than Mr. Burton purchased them at. Mr. Ireland, not a good judge of paintings. At the time the library was purchased, no catalogue was taken of its contents; but witness has since taken a catalogue of the books. The agreement before referred to was read over, and signed by witness. Thinks the Colonel also read it; believes he had it in his hand. The articles not sent to Mr. Burton, were deposited in two farm-houses, near Thornville Royal, for safety. Not being able to remove them by the 6th January, according to agreement, Lord Stourton's agent consented to their remaining a day or two longer, but urged their being removed without delay. Left Thornville Royal the evening the waggons, with the effects, were removed from the door to the farm-houses before-mentioned; wrote to Mr. Burton, at Hotham, (thinks the next evening) apprizing him of the above;—says, he was to meet the Colonel and Mr. Burton at

York. Some of the best pictures have been delivered, *viz.* Denner, Carlo, Maratti, Cigniniani, &c.;—says, he is no judge of horses; had no idea of examining the mares *minutely*. If the scabs had been on the side he saw the mares, he should have seen.

By the Prothonotary—

Mr. Wyburg also purchased pictures of the Colonel; says, he did not value them; Lord Middleton's purchase was before Mr. Burton's; cannot take upon himself to swear any one of the pictures is original, not having seen them painted; could not have supposed such a picture as Denner's head could have been painted; he means to say, that 700 guineas is a reasonable price to be given for a picture, where it is possible it may be a copy; thinks the merit of them worth the money, with the doubt upon his mind, as to their being originals; thinks the Reubens' well worth 1,000*l.*; and that any sums less than those charged, would not have been equivalent to their value; does not know whether it be an invariable rule to value in guineas, and not pounds. From the recollection he has of the

picture of Rochester, thinks it worth from 400*l.* to 600*l.*

On being re-examined,

Says, he solemnly believes the pictures to be all original; but would not swear to the originality of any picture he had not seen painted; has copied pictures of Reubens' and Claude from the Duke of Norfolk's collection; in the purchase of pictures from artists, guineas are used, and not pounds; *Colonel Thornton told Mr. Burton, he had seen and known so much squabbling respecting the originality of pictures, that he would never warrant any one to be original.*

Thus far the evidence had proceeded, when, at the request of Mr. Williams, Colonel Thornton's Counsel, a meeting took place between the parties, their Counsel, and their Solicitors, at which proposals for an accommodation were made, and finally acceded to by the Colonel and Mr. Burton, in a manner highly honourable to both parties.

Mr. Wichello's testimony, it must be observed, is a perfect duplicate of the Colonel's, in many essential points; as to who he is, and the nature of his connections with Colonel Thornton, he has given the most satisfactory account. It appears, they were perfect strangers to each other, until a few days previous to the transactions in litigation; that he was engaged by the Colonel to go to Thornville, to take views of the adjacent country; and there, for the first time, he saw Mr. Burton; who, among a number of other persons, attended the sale; there could be nothing premeditated, for, when the Colonel engaged him, he could had no idea of Mr. Burton's purchasing a single article, for he was invited by public advertisement among three or 400 people. Lord Middleton, and other gentlemen, bought pictures, horses, &c. not one of whom ever made any complaint, or expressed any dissatisfaction: Colonel Thornton likewise, in the same positive and unequivocal manner, denies he ever gave, or promised to give, Mr. Wichello any reward whatever, except the guinea per day originally agreed upon. It must not pass without notice, that Mr. Burton bought the pictures at two

distant periods; now, if he entertained any doubt either of Mr. Wichello's judgment or integrity in the first purchase, why employ him in the second, or entrust him to pack up those very pictures, and go to Hotham to arrange them. There is another circumstance in this gentleman's evidence, that sets at defiance every idea of collusion between him and Colonel Thornton, for he very candidly admits, Mr. Burton is not a sufficient judge of painting, therefore, takes the responsibility on himself: surely, if he had been biased in his testimony in favour of the Colonel, it would have answered the purpose much better to have stated Mr. Burton to be a competent judge, and capable of choosing without the assistance of an artist; and, though Mr. B.'s judgment did not appear to be *scientific*, he says he had taste enough, in sporting subjects, to select the best.—Mr. Wichello very truly, and judiciously observes, that it is almost impossible to ascertain the intrinsic value of a picture, it depends so much *on taste and fancy*. And, indeed, it does not require any great portion of the art of persuasion, to induce men to join him in that opinion; for pictures, like women, too frequently bear an ideal

value; depending on profligate caprice, or unaccountable infatuation, in the choice of which rationality is frequently at too great a distance to interpose.—A depraved mind will squander thousands upon a gaudy Cyprian, while men of liberal sentiment would dedicate the same sum to rescue a virtuous woman from indigence. If Mr. Wichello had been employed by Colonel Thornton to purchase pictures of that description given by Mr. Burton, and his counsel, for the secret purpose of imposing them on ignorant people as the works of great masters, there is no doubt, but it would have been a gross fraud and conspiracy; but no such illicit practice presents itself; it was a genuine sale, by public Advertisement. The Colonel's pictures were well known, and generally admired by a number of scientific people, and cost him upwards of thirty years research in collecting. If we are to believe Mr. Harris, there is very little probability of his selecting daubs and rubbish: for he takes upon himself to swear, there is not a better judge of painting than the Colonel:—nor, is there one circumstance produced to encourage a suspicion, that Mr. Wichello did not give his opinion of the pictures

with judgment and integrity; for he swears, in the most positive manner, that he had no view, no interest in the sale, more than what he expected from Mr. Burton, by whom he considered himself employed: he solemnly denies he ever received any favor, or the promise of any, from the Colonel.—The remainder of this gentleman's evidence, though it does not go to establish any thing material respecting the pictures, is an extensive corroboration of the Colonel's statement in many other respects; and there can be no possible reason to withhold full credit from a man, whose veracity has so effectually rebutted every attempt to assail it.

It would be an unpardonable oversight, were I to omit another observation, relative to the originality of some of the pictures Mr. Burton bought. The two Reubens were purchased by the Colonel, out of the collection of the late Lord Waldegrave, and were presents from Prince Charles of Lorraine, to that nobleman. Can it be supposed, that the illustrious donor would have insulted an English Peer, by soliciting his acceptance of miserable daubs,

and impose them upon him as originals? Those who can believe it, must possess a very CONVENIENT mode of thinking. Denner's Head (by himself) is agreed, on *all hands*, to be the finest picture ever painted; the picture of the horse Jupiter is also acknowledged to be one of the proudest efforts in the art of painting; and, to use Mr. Harris's words, its value is increased from the circumstance of the celebrated artist's (Mr. Gilpin) determination not to paint another. This is the picture that alarmed Mr. Burton so much, least Colonel Thornton should insist on having it back.

The following letter will manifest Mr. Wichello was not the only artist who felt himself justified to call the Colonel's a very fine collection of pictures. A variety of similar letters the Colonel has received, calculated to do him justice in this very extraordinary business.

Exon, Friday, July the 4th, 1806.

SIR,

I have just received your letter. Neither my health, or professional engagements, will permit me to come to town in time to give my opinion in court of the pictures you allude to. With respect to the two large pictures, they appeared to me to be very fine and valuable; I considered them as a great ornament to your well-chosen collection; and thought, that nobody but Rubens could possibly make such designs, or paint figures like those in the picture on the right hand. I should suppose Mr. Wichello's opinion, as to the originality, would stand against an host of evidence; his artistal knowledge, and his character for integrity, cannot be doubted, but by the most ignorant and malicious. The picture of Lord Rochester I should prefer to any one that I ever saw of Sir Peter Lily's; and Mr. Bate,* the painter, who was with me at Thornville Royal, expressed himself to thesame effect. Of the

* An eminent Artist.

Denner, I cannot suppose that any master but him could possibly produce such a specimen of high-finishing, and good art, in that way;—it always excited my *wonder* and *admiration.* Indeed I must observe, that your collection has more good pictures than any one I recollect of the same number; the contents of the Library are curious and valuable.

I am, Sir,

Your humble Servant,

J. R. SMITH.

To Colonel Thornton.

Mr. Burton having very inconsiderately ventured (I term it inconsiderate, as the most tender expression the occasion will admit) some insinuations respecting the conduct of Mr. Clifton, in the execution of the third Warrant of Attorney; the Colonel, feeling for that gentleman's honour equally with own, wrote him the following letter:

London, May, 1806.

Dear Sir,

You must have felt equal surprise and mortification with myself, on viewing, in the public prints, the scandalous affidavit, or, rather the general contents of it, ventured to be sworn to by Mr. C. Burton. I am pleased to inform you, that I have affidavits from Mr. Earnshaw, Mr. Wichello, Mr. Wyburgh, and various other gentlemen, falsifying, in the clearest and most decided manner, the affidavit of Mr. Burton, sentence by sentence, and I am now impatient for the hearing to come on, and my Vindication. Burton has had the meanness, after making *such* an affidavit, to offer, through the channel of the very last people you could think of, Harris and Alicia, and in a visit (very unexpected indeed to Mr. Hubbard) *the humblest terms of accommodation.* They were of course rejected with the contempt they meritted.

Harris, on being asked some questions on my

part by Mr. Hubbard, said he could not give any evidence, either *pro* or *con*; but wished it to be settled without going into Court; and they gave Mr. Hubbard *clearly* to understand, that B. *himself* did not in any way disapprove of the purchases; but the *truth* was, he could not give the security required by those who had promised him money, unless he could get my securities set aside.

I am given to understand, that you have voluntarily made an affidavit, vindicating yourself from the foul insinuation conveyed in his. I should have deemed it very friendly had you communicated such affidavit to me, that I might have incorporated its contents in my reply. Should you not have fully and explicitly negatived this insinuation, but confined your's to newspaper reports, you will truly oblige me, by making an affidavit of the whole transaction, as far as comes within your knowledge, and clearing me from any desire to precipitate the Warrant of Attorney, and shewing that my detention of the two Warrants of Attorney, was for the purpose solely of shewing the original consideration. You must remember, that I was

ready to give up the two former Warrants of Attorney, but that Mr. Mason, or you, suggested, that the original consideration had better be clearly manifest.

In complying with my request, as far as your memory correctly serves you, I shall feel myself greatly obliged to you; and am, with sentiments of esteem,

Sir,

Your most obedient Servant,

T. THORNTON.

—— *Clifton, Esq. Nickals,*
near Otley, Yorkshire.

P. S. Alicia came up to me in Leicester-square, and, amongst other things, assured me, that the Court would not permit me to speak; and that, if I attempted it, Mr. Serjeant Cockell *assured them*, that he would cut me up, and silence me in a moment. In such a cause as this, where my *honour*

and (what I most warmly am bound to combat for) the character and integrity of my friends are attacked, I shall, though reluctantly, struggle hard to have the true state of the case understood, and to expose the gang.

Every man who is acquainted with Mr. Clifton will agree with me, that the Colonel's anxiety upon that occasion was wholly superfluous, as his respectability, both as a Barrister and as a man, has raised him too high in general estimation, for the inuendos of Mr. Burton, or the shaft of calumny, to reach.

Knaresborough, May 5, 1806.

SIR,

Respecting your dispute with Mr. Burton, I herewith send you an affidavit, in hopes of repelling many of his injurious assertions. If I had had more time to do it in, I could have made it more to my own mind, though, perhaps, not more to your in-

terest. Mr. Burton ought to blame himself, and the Court ought to blame him, for making indiscreet bargains, which he was not able to perform, at least, within the time which he himself stipulated for it; as to his insinuations against me, I am perfectly indifferent about them. Wishing you good success,

I remain,

Your very obedient Servant,

PETER EARNSHAW.

To Colonel Thornton.

This gentleman is an attorney of respectability, and filled up the first two Warrants of Attorney; *vide* p. 18 and 19.

Previous to Mr. Burton's application to the Court to set aside the Warrant of Attorney, I shall mark the forbearance of Colonel Thornton to put it in force. It must be remembered, that the Colonel had bailed Mr. Burton on the 23d of

January, who grew dissatisfied with the Warrant of Attorney at that very time. It seems, the Colonel wrote repeatedly, to know the grounds of his objections, and from what his dissatisfaction arose; to neither of which he ever received any answer. This conduct appeared unaccountable to the Colonel, whose desire was to rectify any just matter of complaint, by referring the subject in dispute to a mutual friend; and which the following letter from his agent and confidential friend to Mr. Burton's attorney, will, in a great measure, explain.

38, *Southampton Buildings*,
March 4, 1806.

SIR,

I understand you are concerned for a Yorkshire gentleman of the name of Burton. This gentleman has executed several securities to Colonel Thornton, to a very large amount; the last of which is a Warrant of Attorney for £13,000; independent of which Colonel Thornton, on his way

to town, became bail for him to a considerable amount; Mr. Burton then promised to follow Colonel Thornton to town, and Colonel Thornton engaged to advance him such further sums as might be necessary to extricate him from his difficulties, on such security as I should, on the part of Col. Thornton, advise and approve. Perhaps, Sir, you can explain to me some cause for Mr. Burton's extraordinary conduct, as it will be extremely disagreeable to me, to advise any writs of execution to be issued against either him or his effects; yet his total disregard to his engagements and promises, and his extraordinary silence and inattention to the various letters which have been written to him on the subject, might, I think, justify such a measure. It is my wish, however, to exercise the influence I have with Colonel Thornton to promote an amicable and fair adjustment of all matters between him and Mr. Burton; and I trust you will exert the influence you have with Mr. Burton, to conciliatory purposes. Your answer will oblige,

SIR,

Your obedient Servant,

G. HUBBARD.

After the perusal of this letter let any man say, whether the Colonel had any intention of making any improper use of the Warrant of Attorney; for, at the date of this letter, no steps had been taken; and, even after Mr. Burton's own conduct warranted the Colonel to levy, he yet forbore to do it; and it appears by Mr. Burton's affidavit, on the 23d of April following, no steps had been taken either against his person or effects. If the Colonel had purposed to take that advantage of Mr. Burton, which was in his power, he might have done it long before he applied to the Court; and, I will venture to say, that it is what many men, possessing more honour than they are willing to give the Colonel credit for, would have done.

Previous to the commencement of the arbitration, the following proposal was delivered by the Colonel's counsel to Mr. Burton's:

"Colonel Thornton, to manifest his solemn conviction of the fairness of the price at which he sold to Mr. Burton his collection of paintings, though he has now no gallery adapted for their reception, hereby offers to take back the fol-

lowing proportion, at the value which Mr. Burton gave for them, viz. every picture of Gilpin's, or to which he may have contributed, and other paintings, to the amount of 2,000*l.* of such size as the Colonel can find room for in his present residences; the Prothonotaries to adjust what Mr. Burton shall pay as interest for the sum of money for which such pictures were sold; the pictures to be delivered without injury, and free of expense, at the town house of Colonel Thornton. This offer is not to preclude the Colonel from giving such evidence as he shall think fit before the Prothonotaries, to to testify the fairness of the original contract, and to vindicate the Colonel's character in the whole of the transaction between Colonel Thorton and Mr. Burton. If this be not acceded to, the offer to be considered as never made."

This proposal, so fair and honourable, was rejected;—upon which I could wish the reader to exercise his own judgment;—for, is there a man (Mr. Burton excepted) that would not have readily complied with it? I say, is there a man upon earth, who would wish to avoid the appellation of

Swindler, or who did not depend upon a pettyfogging system to get rid of a just demand, that would not have eagerly embraced the proposal? Mr. Burton's conduct, upon this occasion, bespeaks him either the weakest of all weak men, or the keenest of all cunning ones.—I should rather think the *cunning side* has it; for Yorkshire is not the soil for producing such *luxuriant* sprouts of folly! The proposal contained every thing that was equitable, and sufficient in reason, or moral honesty, to have superseded all further investigation; it is, therefore, very natural to resort to such conjectures as rationality furnishes. Mr. Burton, it seems, wanted to raise a sum of money upon his estate; which, however, he was not able to accomplish while Col. Thornton's judgment stood as a LIEN upon it; therefore nothing less than getting rid of that judgment would answer his purpose. I will not adopt the Colonel's idea of his (B.'s) intentions, when he states on oath,—*he believes the present application has been made to the Court, more from an inclination to defraud him, than from any real cause of complaint*; for, I would avoid, if possible, committing any violence on the moral rectitude of this

gentleman; therefore I will suggest another reason, equally advantageous to himself as detrimental to the Colonel.

We have it from Mr. Burton, on his oath, that making such large purchases displeased his father, who was going to sell an estate for about £60,000, of which, Mr. Burton was to receive two thirds; but the transactions with Colonel Thornton put a stop to the sale; of course he was driven to other means to raise money:—and here I cannot refrain a remark, not very indicatory of Mr. Burton's improvident caution, for he tells us, he took counsel's opinion upon the subject. Now, a man that would apply for legal advice in a transaction against his own father, cannot be *that* man who tells you, he has been so egregiously duped by the Colonel. But to proceed to the arbitration, which lasted eight days:—When Mr. Burton began to lose all hopes of that success he had promised himself, and the Colonel still ready to fall in with every equitable measure, the dispute was settled between them, independent of the Prothonotaries; and, as a confirmation of the Colonel's willingness to what was

fair, (if any confirmation at that period was necessary,) Mr. Burton himself does not withhold his testimony; and, after a vast deal of money expended, and an infinity of trouble created, the business was settled between them on the following terms:— The Colonel, by taking back a considerable portion of property to accommodate Mr. Burton, reduced his demand to £2,720, which the Colonel is to be paid in four years by the following installments:

1st. Installment	£.720	1st. Jan. 1808
2d.	1,000	1st. Jan. 1809
3d.	1,000	1st. Jan. 1810,

with interest.

It is a case so clear, that any further reasoning upon it would tend only to confuse it. The matter being thus settled to the satisfaction of both parties, there remains but one question; Is it possible to collect a jury in this country, that would not have given the Colonel a verdict upon what now appears before them? We may also fairly presume, that had the matter proceeded for the determination of the arbitrators, the Colonel's coun-

sel would have addressed them in terms, not dissimilar to the following:

Upon the whole of this case, gentlemen, I cannot allow myself to entertain a doubt, but that I shall be entitled to your award, for the whole amount of our sales; and, what is more material, that award will effectually vindicate the honour of Colonel Thornton, from the rash, ill-advised, and unwarrantable aspersions of Mr. Burton. I claim it by every rule of justice, and by every principle of honourable dealings. Colonel Thornton has always courted an investigation of his conduct in this affair, from the beginning to this moment; he has made the most honourable and equitable proposals. What Mr. Burton originally refused, the Chief Justice applauded the Colonel for offering; and his adoption for the Colonel's offer, brought us hither; the Colonel's only wish was, that the whole of the transaction might be laid before men of honour and intelligence, whose feelings and sense of justice would induce them to hear the case, free from the shameless prejudice so industriously circulated. He assured the Court of his

reliance, that in you he should find such arbitrators, and I am convinced he will not be deceived. You will not estimate the works of painters, as a shopman would a yard of dowlass, a hogshead of sugar, or a jar of raisins; the average price of which is known to every one, of the most ordininary and illiterate condition of life. Nor will you value a work of the immortal Reubens by the rash assertions of Mr. George Harris, once a lieutenant in his Majesty's Navy. You will not surrender your experience and understanding, and believe that every horse, dog, and deer, was scabbed between the window of Colonel Thornton's house, and the bounds of his premises; and yet, that not one dog, horse, or deer, that was left behind, was, neither then, or since affected. In short, gentlemen, every dictate of law, and every impulse of correct feeling, must point out, with irresistible conviction, your decision on this occasion; and I am persuaded, you will lament, that in your award you cannot punish a rash, malevolent, and injurious attempt, to avoid the payment of a just debt. My client's property and character,

is at your disposal; it cannot be in better hands; and he will receive your decision with the most perfect satisfaction.

The reader will find no difficulty in anticipating the conditions of the award, had it been made.

I have, therefore, only to ask Mr. Burton, or any of his friends, how many men could be found that would have given him four years to pay the money agreed upon, after having been the subject of all the calumny, expense, and inconvenience the Colonel has suffered; especially as he had it in his power to take his person in execution, or levy on his effects, without giving him a day? So much for the Colonel's IMPOSITION, FRAUD, and OPPRESSION.

APPENDIX.

My original intention in compiling these few sheets, had nothing further in view than a desire to rescue Colonel Thornton from the effects of the most unjustifiable calumny, respecting his transactions with Mr. Burton; and, in performing this task, I have laid the public character of this gentleman (whether good or bad) out of the question:—to those who think him a worse man than I do, I shall use the words of that virtuous judge, Lord Kenyon, "The devil himself is entitled to justice;" and, I believe, the candid reader will not deny a man that privilege who has been the subject of incessant scurrility, fabricated by the foulest malice. I have now before me, no less than fifteen public papers, teeming with virulent falsehood and profligate insinuations against him. When I say falsehoods, I

have the conviction of my own senses for my authority; the various representations of his dispute with Mr. Burton, originates either in gross error, or more criminal premeditation. In one of these papers (Statesman 24th April) is what is *there* called a report of the proceedings in the Court of Common Pleas, which states, that Colonel Thornton has caused execution to be taken out against Mr. Burton, for the enormous sum of £27,000, without having given any real consideration for it, except ten guineas, lent money: this representation naturally produced a torrent of obliquy, increased by illiberality, and embraced by credulity. The prejudice occasioned by this charge, and indeed all others respecting the transactions of the Colonel with Mr. Burton, I trust my humble endeavours will in some measure remove. His dispute with Mr. Flint, and treatment of Miss Massingham, I certainly should have avoided; but upon the perusal of the papers before me, I feel myself propelled to make some few remarks, perhaps not wholly unprofitable to that gentleman and lady.—First, as to Alicia, the *ci-devant* Mrs. Thornton, if she has a serious complaint worthy the cognisance of the public, she

has suffocated her cause in a deluge of ribaldry, and greatly diminished the commiseration an injured woman is entitled to. If she was seduced, * (as she says) under the influence of the justifiable ambition of becoming the wife of a man of rank and fortune, she is truly pitiable; and her cause could never find a more ardent advocate than it meets with in the person who now suggests to her the impropriety of her conduct:—a conduct, there is too much reason to believe, she has been betrayed into, to gratify, perhaps, the malevolence of those who have no other means of giving vent to their rancour.

Alicia does not consider; nor, perhaps, does her ill-judging adviser consider for her, that the effusions of the wretched trash with which she has sullied the daily prints, must weaken her cause, and sink her in the estimation of every man, whose good opinion is worth conciliating: for what is to be gathered from that olio of nonsense, mixed up with

* Alicia, having paid so little regard to veracity, in her attempts to stigmatise the Colonel, the story of her seduction ought to be received with a considerable degree of caution.

Jefferys, the jeweller, Jew King, the money broker, Thornton, the pelisse merchant, and Flint the athletic flogger? is it not an argument in favour of Colonel Thornton, that this lady, who lived with him eight years, in the character of his wife, and who, of course, must be privy to all his transactions, is unable at this day, to charge him with any act, tainted with criminality, or unworthy a man in his situation of life; but, to vent her spleen, is compelled to adopt low scurrility, and the most contemptible invective; which, however it may mark the eccentricity, or volatile folly of the Colonel, amounts to no impeachment of moral rectitude, or a single instance of vicious profligacy. As for myself, I solemnly protest, that till the evening previous to making these observations, I never saw a single paper I now allude to; when I imposed on myself the disgusting task of reading that crippled farrago of limping lies, every one of which admits a refutation as ornamental to the Colonel's character, as they would be disgraceful to the authors of these aspersions. I cannot quit the ill-fated Alicia, without assuring her, that I consider myself her friendly admonitor, and not as the advocate of Colonel Thornton's conduct against her *just cause of resentment*; for Alicia may

rely on my word, when I solemnly declare, that the whole domain of Thornville Royal itself should not bribe me to vindicate the atrocity of betraying a virtuous woman, by the impious means of treachery and perjury; for promises made to marry a woman for no other motive but to seduce her, is, in my opinion, the most execrable perjury a man can be guilty of.—If she wishes to impress her injuries on the mind of the public, she must adopt a different language, and say something more than I have read; for all she has said is less than nothing.—She has, indeed, made the Colonel run the gauntlet through a variety of insinuations, one of which is impregnated with a degree of poisonous rancour, that I cannot pass over, without an attempt to extract its venom.

Among the appellations Alicia bestows on him, Old Bailey Thornton is one. In this, there is something truly diabolical, as it gives birth to a variety of conjectures, congenial to the disposition of those who imbibe them; and affords ample licence for the indulgence of inveterate malignancy, or what is equally pernicious, the effects of ignorant conclusions; it is a vicious text, and the prolific

parent of an extensive context; for, from this insinuation it may be conjectured, that the Colonel has committed Forgery, Robbery, Murder, or any other offence in the catalogue of felonies;—but what *is* the fact? and to what extent ought the insinuation to go?—simplified, thus it stands:—

The Colonel had unfortunately fallen into the hands of a man who thought him rich, and a promising object for plunder. In the process of defending himself against this man's efforts to extort a large sum of money from him, it was necessary the Colonel should make an affidavit, upon which he was wickedly indicted for perjury:—even that step, diabolical as it was, proved insufficient to terrify him into a compliance with this infamous demand; he gave bail to the charge, and defended himself with a spirit that drew applause from every person that knew the transaction. He withstood all overtures of a base compromise, and submitted to his trial, with a conscious dignity that ever accompanies unequivocal innocence. He was in five minutes, most honourably acquitted, amidst the execrations bestowed on the base authors of the

iniquitous prosecution. Here then let us put an extinguisher upon this inflammatory torch of atrocious calumny; perhaps, at a future period, I may dissect all the other charges that Alicia has indiscreetly avowed herself the authoress of. At present, I will only request her, *for her own sake*, to keep silence upon the subject of the Court Martial; and I could wish her to whisper this secret in the ear of the gentleman who assists in disseminating these feeble and sickly attempts, to procure the reputation of a brilliant writer, that it will not require more than half an hour's consideration, to prepare a dose sufficient to quench his thirst for literary fame, the remainder of his life.

A word or two respecting Mr. Flint will close my animadversions:—I shall not enter into a minute investigation of the nature of the bet that called for the arbitration of an horsewhip;—I notice the fact, as, in all probability, what I am writing will be read by many sporting gentlemen. Mr. Flint has certainly been very fortunate in the result of the contest, and I hope he will congratulate himself, that the Colonel, in taking legal steps, did

not stumble on my sentiments of the most effectual means of legal retaliation; for if he had, it is very probable, Mr. F. would at this time have been incommoded with the assiduity of the governor of York Castle. However, the possibility of this prediction I will submit to his own contemplation, after the perusal of a clause in a very unmannerly Act of Parliament, made for the express purpose of prohibiting all manual exercise in the arrangement of play debts:—9 An. c. 24, sec. 8. "In case any person shall assault and beat, or challenge, or provoke to fight, any other person, upon account of money won by gaming, or betting, he shall, being convicted upon indictment, or information, forfeit to her Majesty, all his goods, and suffer imprisonment in the common gaol of the county two years." The only question that could raise a doubt in favour of Mr. Flint upon this clause is, whether horse-whipping would be construed a beating, and I should apprehend those who have undergone the discipline would give a decided opinion in the affirmative. However, as threatening to do it equally incurs the penalty of the

law, we will not count the stripes, or blows necessary to constitute the offence, but proceed to precedents.

About fourteen years ago, two gentlemen (one of whom was a clergyman) were indicted under this clause for striking one Armstrong, on account of a bet lost at Brighton; the gentlemen being apprised of their dreadful situation, absconded, and remained in France several years; at length Armstrong forgave them, on condition of their paying the poor of the parish of Brighton £100. A similar conviction, of a later date, attended with more fatal consequences, Mr. Flint may learn from two gentlemen of sporting notoriety;—the prosecutor, Mr. Embden, and the defendant Mr. Darley: this also happened at Brighton, about three years ago, and which was accurately thus:—Mr. E. had won 50 guineas of D. at hazard, for payment of which E. called at D.'s chambers, and upon some disagreeable language passing between them, D. turned E. out of the room, with some trifling violence, which E. made the ground of an indictment upon the clause I have stated, and

D. was convicted; who, after suffering six months imprisonment in the King's Bench, some further confinement in Horsham gaol, all his property, to the amount of £10,000, sequestered to the King's use;—the business was at length compromised by Darley paying 1000 guineas to the high bailiff of Westminster, and all the prosecutor's enormous costs. As I have stated the foregoing cases, for the information of men liable to fall into the same error, I will briefly give the intention of the legislator in framing the act:—it declares, that no man shall be compelled to pay more than £10 he may lose at one time, by playing or betting, at any game;* but that the same shall, with all securities, be void; and that the person losing such sums may not be terrified by menaces, or actual violence, the above clause was avowedly penned. From the letter and spirit of this Act, the man who DEMANDS the money, is evidently the offender, within the meaning of it; therefore Darley was illegally convicted, for Emden was the man

* Though horse-racing and back-gammon are legal, yet the money lost or won *by betting* on either side, is within the mischief the Act was made to prevent.

who committed the offence. I doubt not but Mr. Flint will draw a very comfortable comparison between the situation he *is* in, and the situation he *might* have been in.

FINIS.

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